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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 541

EDWARD B. DOUGLAS, PETITIONER,

vs.

LEWI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 26, 1934.

CERTIORARI GRANTED APRIL 8, 1935.

SUPREME COURT OF THE UNITED STATES

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1 United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Pleas before the Honorable, the Judges of the United States District Court for the District of Minnesota.

Be it remembered that on the 26th day of December, 1931, there was filed in said Court in the above entitled action a complaint, in the words and figures following:

2 Complaint.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. At Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Comes now Edward B. Douglas, plaintiff herein, and for his cause of action herein against the defendant alleges:

I.

Plaintiff is and at all times hereinafter mentioned was a citizen of the United States and a resident of Deephaven, Hennepin County, in the State and District of Minnesota.

II.

The defendant Levi M. Willcuts was, in the year 1921, at all times since has been and now is the duly appointed, qualified and acting Collector of Internal Revenue of the United States in and for the District of Minnesota.

III.

This is a suit of a civil nature at common law, arising under the constitution and laws of the United States and par-

ticularly under the laws of the United States pertaining to internal revenue.

IV.

On the 12th day of September, 1923, plaintiff created the trust, hereinafter described as the Ida M. Douglas Trust, by that certain agreement dated September 12th, 1923, by and between Edward Bruce Douglas, party of the first part, Ida M. Douglas, party of the second part, and Minneapolis Trust Company, party of the third part, of which Exhibit I, hereto attached and hereby made a part hereof, is a true and correct copy. On September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee under said agreement, the securities
3 listed and described in Exhibit "A" attached to said agreement. On November 6, 1927, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee, the securities listed and described in Exhibit II hereto attached and hereby made a part hereof. The net income of said Ida M. Douglas Trust for the calendar year ended December 31, 1928, distributable to the beneficiary thereof was Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39). Said net income was the interest, dividends and other yield paid to said Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities. Said net income consisted of the following items, to-wit: Interest on tax-free covenant bonds, Nine Thousand Two Hundred Sixty and 96/100 Dollars ($9,260.96); tax paid at source on tax-free covenant bonds, One Hundred Eighty-five and 22/100 Dollars ($185.22); cash dividends Six Thousand Four Hundred Forty-one and 96/100 Dollars ($6,441.96); other income One Thousand Nine Hundred Fourteen and 47/100 Dollars ($1,914.47).

V.

On the 16th day of March, 1928, plaintiff created the trust hereinafter described as the Florence S. Douglas Trust, by that certain agreement dated March 16, 1928, by and between Edward B. Douglas, party of the first part, First Minneapolis Trust Company, party of the second part, and Florence S. Douglas, party of the third part, of which Exhibit III, hereto attached and hereby made a part hereof, is a true and correct copy. On March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company, as Trustee under said agreement, the securities listed and described in Exhibit "A" attached to said agreement. Upon the execution of said agreement

and pursuant thereto plaintiff irrevocably surrendered all power and right to change the beneficiary of the policies of insurance listed in Schedule "B" attached to said agreement. The net income of said Florence S. Douglas Trust for the calendar year ended December 31, 1928, distributable to the beneficiary thereof was Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95). Said net income was the interest, dividends and other yield paid to the First Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities.

Said net income consisted of the following items, to-
4 wit: Interest on tax-free covenant bonds, One Hundred Twenty Dollars ($120.00); tax paid at source on tax-free covenant bonds, Two and 40/100 Dollars ($2.40); cash dividends, Seventeen Thousand Eighty-seven Dollars ($17,087.00); other income, Eleven Thousand Four Hundred Twelve and 95/100 Dollars ($11,412.95).

Plaintiff, in compliance with the provisions of the Revenue Act of 1928, Title 26, U. S. C. A., par. 2001, et seq. and on or about March 15th, 1929, made and filed his return to the defendant as Collector of Internal Revenue of the United States in and for the District of Minnesota of income, deductions and tax liability for the calendar year ended December 31, 1928. In computing his net income disclosed in said return plaintiff did not include in his gross income for the calendar year ended December 31, 1928, the sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income aforesaid of said Ida M. Douglas Trust, or any part of the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income aforesaid of said Florence S. Douglas Trust.

VII.

On or about October 16th, 1930, the Commissioner of Internal Revenue of the United States, in connection with an audit of plaintiff's said return for the calendar year ended December 31, 1928, and an examination of his books and records and the books and records of said Minneapolis Trust Company and First Minneapolis Trust Company, assuming to act, as plaintiff is informed and believes under the provisions of Section 162(b) of said Revenue Act of 1928, being paragraph 2162(b), Title 26 U. S. C. A., and Section 167 of said Revenue Act of 1928, being paragraph 2167, Title 26, U. S. C. A., determined that plaintiff was required to include in his gross income for said calendar year ended December 31, 1928, the sum of Seventeen Thousand

Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income aforesaid of said Ida M. Douglas Trust, and One Thousand Forty-six and 98/100 Dollars ($1,046.98) of the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income aforesaid of said Florence S. Douglas Trust. Said amount of One Thousand Forty-six and 98/100 Dollars ($1,046.98) is that portion of the premiums on the policies of insurance described in Exhibit III hereof and Schedule "B" thereto attached, paid in the calendar year ended December 31, 1928, by First Minneapolis Trust Company from the income of said Florence S. Douglas Trust, not derived from tax-exempt securities. Upon said determination said Commissioner of Internal Revenue included said sums in plaintiff's gross income for said calendar year ended December 31, 1928, and recomputed plaintiff's tax liability for said year. Said Commissioner of Internal Revenue thereupon determined that plaintiff was liable for an additional tax for said calendar year in the amount of Two Thousand Five Hundred Eighty-one and 74/100 Dollars ($2,581.74), which amount, together with interest thereon in the amount of Two Hundred Fifty-nine and 87/100 Dollars ($259.87), was, by said Commissioner, assessed against plaintiff in March, 1931. Said additional tax liability and said interest arise by reason of said determination by said Commissioner of Internal Revenue.

VIII.

On March 28, 1931, defendant demanded of plaintiff that he pay Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) on March 30th, 1931.

IX.

On April 8th, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum so paid by plaintiff to the defendant on March 30, 1931, a copy of which said claim is hereto attached, marked Exhibit IV and made a part hereof. On December 4, 1931, said Commissioner of Internal Revenue rejected plaintiff's claim aforesaid in full by letter dated December 4, 1931, a copy of which, marked Exhibit V, is hereto attached and hereby made a part hereof.

For a Second Cause of Action.

X.

Plaintiff repeats and makes a part of this action each and every allegation in paragraphs I, II, III and the first three (3) sentences of paragraph IV and alleges:

6

XI.

The net incom of said Ida M. Douglas Trust for the calendar year ended December 31, 1927, distributable to the beneficiary thereof, was Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52). Said net income was the dividends and other yield paid to said Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities. Said net income consisted of the following items, to-wit: Dividends, Nine Thousand Eight Hundred Fifty-seven and 66/100 Dollars ($9,857.66); other income, Two Thousand Seven Hundred Fifty-two and 86/100 Dollars ($2,752.86).

XII.

Plaintiff, in compliance with the provisions of the Revenue Act of 1926, Title 26, U. S. C. A., par. 931, et seq., and on or about March 15th, 1928, made and filed his return to the defendant, as Collector of Internal Revenue of the United States in and for the District of Minnesota, of income, deductions and tax liability for the calendar year ended December 31, 1927. In computing his net income disclosed in said return plaintiff did not include in his gross income for the calendar year ended December 31, 1927, the sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income aforesaid of said Ida M. Douglas Trust.

XIII.

On or about March 5, 1931, the Commissioner of Internal Revenue of the United States, in connection with an audit of plaintiff's said return for the calendar year ended December 31, 1927, and an examination of his books and records and the books and records of said Minneapolis Trust Company, assuming to act, as Plaintiff is informed and believes, under the provisions of Section 219 (b) (2) of said Revenue Act of 1926, being paragraph 960, Title 26, U. S. C. A., determined that plaintiff was required to include in his gross income for said calendar year ended December 31, 1927, the said sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income aforesaid of said Ida

M. Douglas Trust. Upon said determination said Commissioner of Internal Revenue included said sum in plaintiff's gross income for said calendar year ended December 31, 1927, and recomputed plaintiff's tax liability for said
7 year. Said Commissioner of Internal Revenue thereupon determined that plaintiff was liable for an additional tax for said calendar year in the amount of One Thousaid Seven Hundred Fifty-eight and 38/100 Dollars ($1,758.38), which amount, together with interest thereon in the amount of Three Hundred Thirty-six and 40/100 Dollars ($336.40) was, by said Commissioner, assessed against plaintiff in May, 1931. Said additional tax liability and said interest arise by reason of said determination by said Commissioner of Internal Revenue.

XIV.

On June 3, 1931, defendant demanded of plaintiff that he pay Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) on June 4, 1931.

XV.

On or about June 15, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum so paid by plaintiff to the defendant on June 4, 1931, a copy of which said claim is hereto attached, marked Exhibit VI and made a part hereof. More than six months have expired since the date of filing said claim of refund and plaintiff has not been notified that said Commissioner of Internal Revenue has rendered his decision thereon and upon information and belief plaintiff alleges that said Commissioner of Internal Revenue has not rendered a decision thereon. No part of said additional tax for said calendar year ended December 31, 1927, and no part of the interest thereon, so paid as aforesaid, has ever been refunded to plaintiff.

Wherefore, plaintiff demands judgment against defendant in the sum of Two Thousand Eight Hundred Forty-
8 one and 61/100 Dollars ($2,841.61), with interest thereon according to law from the 30th day of March, 1931, and judgment against defendant in the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), with inter-

est thereon according to law from June 4th, 1931, together with his costs and disbursements herein.

Dated December 22nd, 1931.

LELAND W. SCOTT,
JUNELL, OAKLEY, DRISCOLL & FLETCHER,
Attorneys for Plaintiff,
1310 First National-Soo Line Building
Minneapolis, Minn.

State of Minnesota,
County of Hennepin—ss:

A. B. Whitney being first duly sworn says that he is the Vice-President of First Minneapolis Trust Company, the duly appointed attorney-in-fact of the plaintiff above named; that First Minneapolis Trust Company is acting in the matter referred to in the foregoing Complaint pursuant to a Power of Attorney, which has not been revoked, given and executed by the Plaintiff; that the reason why this verification is not made by the plaintiff is that he is absent from the United States, wherein affiant resides; that affiant has read the foregoing complaint and is familiar with the statements contained therein; that the facts therein stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

A. B. WHITNEY.

Subscribed and sworn to before me this 24th day of December, A. D. 1931.

(Notarial Seal)

L. H. ROUSE,
Notary Public Hennepin County, Minn.

My commission expires March 15th, 1938.

9

Exhibit I.

This Agreement, made in triplicate this 12th day of September, A. D., 1923, by and between Edward Bruce Douglas, party of the first part, Ida M. Douglas, party of the second part, and Minneapolis Trust Company, a corporation under the laws of the State of Minnesota, with its principal place of business in the City of Minneapolis, as Trustee (and hereinafter for brevity sometimes called the "Trustee", party of the third part, Witnesseth As Follows:

That in consideration of One Dollar ($1.00) and other valuable consideration to the parties of the first and second parts

paid, the receipt and sufficiency whereof are hereby acknowledged, and of the mutual settlements and adjustments of rights and interest in and to the estate and property herein involved by virtue of the execution of this agreement, the party of the first part hereby conveys, assigns, transfers and sets over to the party of the third part as Trustee securities of the par or estimated value of Three Hundred [Thirty] Thousand Dollars ($300,000), a list of which securities is contained in Exhibit "A" hereto annexed, and does further transfer, set over and agree to assign and deliver on November 6, 1927, such proportion of the properties which he will on said day receive from the estate of his father, Walter D. Douglas, under the provisions of his father's will, as One Hundred Twenty Thousand Dollars ($120,000) bears to the entire property then received by him under said will, and agrees at said time to transfer to the Trustee securities of the par value of One Hundred Twenty Thousand Dollars ($120,000) to be approved by the Trustee as the representative of the party of the second part as reasonably safe income producing securities.

To Have And To Hold the same upon trust, however, for the following uses and purposes, to-wit:

1. To pay from the principal of said trust estate as soon as may be convenient after the execution and delivery of this trust agreement, the following amounts:

(a) The sum of Twenty-two Thousand Five Hundred Dollars ($22,500) in cash to the party of the second part from which she undertakes and agrees to pay all bills incurred by her up to the present time, which might be a charge against the party of the first part, and which the party of the first part has not heretofore expressly agreed to pay.

(b) An additional sum of Seventy-five Hundred Dollars ($7500) to Lancaster, Simpson, Junell & Dorsey of Minneapolis, Minnesota, for services rendered the party of the second part by said firm, and by Nicoll, Anable, Fuller & Sullivan of New York City.

2. To pay from the income from said trust estate to the party of the second part annually during her life time the following amounts:

(a) The sum of Fifteen Thousand Dollars ($15,000) per annum beginning as of September 1, 1923, up to, and until the 6th day of November 1927.

(b) The sum of Twenty-one Thousand Dollars ($21,000) per annum beginning November 6, 1927, and continuing during the lifetime of the party of the second part.

Said payments to be made in quarterly instalments on the first days of December, March, June and September, the first payment to be made December 1, 1923.

(c) To pay the amount of income tax that may be payable by said party of the second part on the specific amount of income receivable by her hereunder. The amount of such income tax so payable from the trust estate shall be computed on the basis that the specific amount of income receivable by the party of the second part from said trust estate is her total income.

3. The Trustee shall have the right and is hereby authorized to collect the interest and principal from all securities in said trust fund and reinvest the same in similar securities, and the party of the first part may from time to time substitute and change the securities in said trust fund; subject, however, to the consent and approval of the party of the third part. The party of the first part reserves to himself the right from time to time to designate and determine in what securities said trust shall be invested, subject, however, to the approval of the Trustee, acting in that respect for the party of the second part, as to the reasonable safety and adequate income-producing nature of such securities.

In case the net income from said trust fund is not sufficient at any time to pay the future payments above provided to be made to the party of the second part at the time the same are due, then the party of the third part shall request such deficiency to be immediately made good by the party of the first part. If the party of the first part shall fail to make good such deficiency before the instalment which becomes due next after the date of said notice is payable, then the party of the third part shall make up such deficiency from the principal of said trust fund through the sale of securities or otherwise as it may deem advisable.

In case the net income from said trust fund exceeds the payments required from time to time to be made, and if the principal of said trust fund is not presently impaired, then the party of the third part shall pay such excess to the party of the first part, his heirs, executors, administrators or assigns, with the right, however, to from time to time reserve a reasonable amount of income to fairly insure the prompt payment of future instalments to the party of the second

part. If, however, the principal of said trust fund shall at any time be impaired, and if the party of the first part shall not make good such impairment, all income from said trust fund—in excess of the amount from time to time required for the annual payments and charges against said fund—shall become a part of the principal of said trust fund and be added thereto to be invested and reinvested in the manner hereinbefore provided, until the aggregate amount for the time being of the securities in said trust fund shall reach the principal amount above specified.

In case any of the securities in said trust fund shall become of impaired or doubtful value, or not likely in the opinion of the trustee to produce a fair proportionate
12 amount of the income herein provided, then in such case the trustee shall request the party of the first part to substitute other securities therefor and the party of the first part shall thereupon substitute therefor an equal amount par or estimated value of reasonably safe and adequate income producing securities satisfactory to the Trustee, it being intended hereby and the party of the first part undertakes and agrees to keep the principal of said trust fund continuously up [—] the amounts herein provided.

4. The principal amount of the trust fund hereby created shall be deemed to be the sum of Three Hundred Thousand Dollars ($300,000) up to November 6, 1927, and thereafter the sum of Four Hundred Twenty Thousand Dollars ($420,000) plus any accretions thereto from profits and stock dividends referred to in paragraph 6 hereof.

5. It is expressly agreed by and between the parties hereto, and more especially by the party of the second part, that the provisions herein made for her are in lieu of, and in full settlement of alimony, and of any and all dower rights or statutory interests in the estate of the party of the first part, and in lieu of any and all claims for separate maintenance and allowance for her support.

6. By the term "net income" hereunder shall be meant the income and interest arising from the said trust fund, exclusive of the profits realized from the sale of any of the items thereof and exclusive of stock dividends (such profits and stock dividends being counted a part of the principal thereof, to be added thereto) and less income tax paid by the trustee as above provided and any necessary charges and expenses paid or incurred in connection with the management and protection of said trust fund and the Trustee's proper compensation for its services hereunder.

7. The securities belonging to said trust fund shall be held in the name of the party of the third part as Trustee under this agreement and shall constantly be shown on its books and records to be a part of said trust estate, and all funds belonging thereto shall be deposited in its name as
13 Trustee, and the Trustee shall during the month of November of each year make a written report as to the conditions of said trust fund to the party of the first part and to the party of the second part, said report to contain a complete inventory and description of the securities and properties belonging to said trust fund and a complete statement of the principal and income receipts and disbursements in connection therewith.

8. The party of the third part as Trustee shall receive reasonable compensation for its services hereunder not exceeding, however, five per centum (5%) of the income collected from all securities hereby assigned to it, or which may hereafter become a part of said Trust Estate, and from all investments and reinvestments hereunder made by it during the existence of said Trust, and one per centum (1%) of the principal distributed upon final distribution thereof, whether by distribution to the party of the first part, his heirs, executors, administrators, successors, or assigns, or to a successor Trustee, appointed pursuant to the terms and conditions of this agreement, it being understood that the party of the third part or the Trustee hereunder for the time being may purchase through its investment departments with the principal funds belonging to said Trust Estate, securities of the kind herein authorized, as they may be offered to the public, without affecting the Trustee's right to the compensation above specified for its services.

9. The party of the first part, his heirs, executors, administrators or assigns, may at any time with the written consent of the party of the second part appoint a successor trustee, in place and stead of the Trustee herein designated or the trustee then acting by designating and appointing such successor trustee in writing, and upon paying to the then acting trustee all charges and fees due and owing to it or accruing to it pursuant to the terms of this agreement; and upon there being deposited with the trustee then acting, the written appointment of a successor trustee, signed by the party of the first part, the written consent of the party of the second part consenting to such appointment, and a written and duly executed acceptance of the trust by
14 the successor trustee appointed, and upon there being paid to the acting trustee the charges and fees afore-

said, the acting trustee shall duly transfer to the successor trustee all of the property and funds then belonging to the trust estate hereby created.

10. The obligations of this agreement shall be binding upon the heirs, executors, administrators and assigns of the party of the first part, and upon the successor and successors of the party of the third part, and the benefits hereof, after the termination of the trust hereby created, shall inure to the party of the first part, his heirs, executors, administrators and assigns.

11. Upon the death of the party of the second part, the party of the third part shall assign, transfer and set over all securities and moneys held by it hereunder to the party of the first part, his heirs or assigns, and this trust and this agreement shall then cease and terminate.

In Witness Whereof, the parties of the first and second part have hereunto set their hands and seals, and the party of the third part has caused these presents to be executed and its corporate seal to be hereunto affixed the day and year first above written.

EDWARD B. DOUGLAS (Seal)
IDA M. DOUGLAS (Seal)

Signed, Sealed and Delivered
Joseph H. Colman
May Finnegan

MINNEAPOLIS TRUST COMPANY,
By A. B. Whitney,
Its Vice President.

Joseph H. Colman
May Finnegan

Attest: H. VERDELIN,
Its Ass't Secretary.

33759

Lew G. Wallace
H. D. Manchester

15 State of Minnesota,
County of Hennepin—ss:

On this 14th day of September, 1923, before me, a Notary Public within and for said County and State personally appeared Edward Bruce Douglas to me personally known to be the person described in and who executed the foregoing in-

strument and he acknowledged that he executed the same as his free act and deed.

MAY FINNEGAN,
Notary Public, Henn. Co., Minn.

My Commission expires July 6th, 1930.

State of Minnesota,
County of Hennepin—ss.

On this 13th day of September, 1923, before me, a Notary Public within and for said County and State personally appeared Ida M. Douglas, to me personally known to be the person described in and who executed the foregoing instrument, and she acknowledged that she executed the same as her free act and deed.

MAY FINNEGAN,
Notary Public, Henn. Co., Minn.

My Commission expires July 6, 1930.

State of Minnesota,
County of Hennepin—ss.

On this 21st day of September, before me a Notary Public within and for said County, personally appeared A. B. Whitney and H. Verdelin, to me personally known, who being by me duly sworn, did say that they are the Vice President and Ass't. Secretary respectively of Minneapolis Trust Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said A. B. Whitney and said H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

LEW G. WALLACE,
Notary Public, Hennepin County, Minn.

My Commission Expires Aug. 2nd, 1930.

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16 Exhibit A

	Municipal Bonds	Par	Due	Rate	Amount	Return
2	Becker County Ditch Bonds	1,000	Feb. 1, '53	5¼%	2,000	115.00
3	Blue Earth County Ditch	1,000	June 15, '38	6	3,000	180.00
3	Cass County Sch. Dist. #19	1,000	Mar. 1, '35	6	3,000	180.00
8	Faribault County Ditch	500	Jan. 1, '34	5	4,000	100.00
1	Faribault County Ditch	1,000		5	1,000	150.00
1	Harvey School Dist. #38 (Wells County, N.D.)	1,000	July 1, '42	6	1,000	60.00
1	County of Isanti Ditch			6	1,000	60.00

1	LacQuiParle County Ditch	1,000	Feb.	1, '38	5¾	1,000	57.50
1	" " "	1,000	July	1, '41	6	1,000	60.00
2	Mahnomen County Road	1,000	June	1, '31	6	2,000	120.00
3	Meagher County, Mont., Road	1,000	July	1, '33	5	3,000	150.00
1	" " " "	1,000	July	1, '36	5	1,000	50.00
2	Pine County Sch. Dist. #24	1,000	Sept.	1, '36	7	2,000	140.00
3	Polk County School #3	1,000	May	1, '35	6	3,000	180.00
1	Redwood County Drainage	1,000	Dec.	1, '31	6	1,000	60.00
2	" " "	1,000	Dec.	1, '34	6	2,000	120.00
1	St. Louis County Road	1,000	Jan.	1, '31	5½	1,000	55.00
2	St. Louis County School #12	1,000			5	2,000	100.00
2	Sibley County Ditch	1,000	Feb.	1, '35	5¾	2,000	115.00
1	S. Dak. Rural Credit (Series L of 1919)	1,000	June	1, '32	5	1,000	50.00
2	S. Dak. Rural Credit (Series C. of 1921)	1,000	Dec.	1, '34	5½	2,000	110.00
3	Steel County School #63	1,000	May	1, '35	5½	3,000	165.00
2	Dakota County Special School District #1 (So. St. Paul)	1,000	Apr.	1, '36	6	2,000	120.00
4	Traverse County Road	1,000	Dec.	1, '30	5¾	4,000	230.00
4	Twin City Trading Co.	1,000	Apr.	1, '28	5½	4,000	220.00
2	Yellow Medicine Ditch	1,000	Jan.	1, '34	5¾	2,000	115.00
	" " Public Drainage Ditch	200	Nov.	1, '25	5	200	10.00
1	Mpls. Trust Joint Land Bank	1,000	May	1, '52	5	1,000	50.00
	Industrial and Public Utility Bonds:						
3	Carolina, Clinchfield & Ohio Railway	1,000	Dec.	15, '52	6	3,000	180.00
13	Armour & Co., of Delaware	1,000	Jan.	1, '43	5½	13,000	715.00
1	Paducah Electric Co.	1,000	Jan.	1, '38	6	1,000	60.00
25	Island Warehouse Corporation 1st Mtg. 6's	1,000	Mar.	1, '43	6	25,000	1500.00

17 Farm Mortgages

	Name	Rate	Amount	Annual Return
No. 10007	Norem	5%	$6,000.00	300.00
12795	Severson	5½	10,000.00	550.00
12003	Zieladorf	5½	5,000.00	275.00
7639	Ekkrehagen	6	1,500.00	90.00
	D. F. Brooks Note	5½	5,500.00	302.50

Stocks

				(about)	
1324.98	Shares of Douglas Securities Co., Capital Stock	132,498.00	5%	$6624.90	
150	" " Canadian Elevator Co., Pfd. Stock	15,000.00	7%	1050.00	
200	" " American Cotton Fabric Co., Pfd. Stock	20,000.00	7%	1400.00	
83	" " Piper Howe Lumber Co., Pfd. Stock	8,300.00	10%	830.00	
62	" " First National Bank Capital Stock	15,500.00	14%	868.00	
100	" " Commercial Acceptance Trust Co. Pfd.	10,000.00	7%	700.00	
50	" " McCall Corp., Pfd.	5,000.00	7%	350.00	

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Exhibit II.

Whereas under date of September 12th, 1923, Edward Bruce Douglas entered into an agreement with Minneapolis Trust Company as Trustee for the benefit of Ida M. Douglas, and

Whereas First Minneapolis Trust Company is the successor by consolidation to Minneapolis Trust Company, and

Whereas said agreement provided for the payment of Twenty-one Thousand Dollars ($21,000) a year to Ida M. Douglas, beginning November 6th, 1927, and the transfer to cover said payment, of approximately $120,000 par value of securities, and

Whereas said Edward Bruce Douglas has selected certain securities to be added to said trust fund, more particularly described in Exhibit A hereto attached and made a part hereof, which list of securities have been approved by the Trustee,

Now Therefore in consideration of the transfer of such securities the Trustee agrees to hold the same pursuant to the terms, conditions and provisions and covenants of said agreement dated December 12th, 1923.

In Witness Whereof the party of the first part has hereunto set his hand and seal and the party of the second part has caused these presents to be executed and its corporate seal to be hereunto affixed this 10th day of December, 1927.

EDWARD BRUCE DOUGLAS.

Signed, Sealed and Delivered
in the presence of:
Robert Baldwin
P. J. Hubbard

FIRST MINNEAPOLIS TRUST COMPANY, successor by consolidation to
MINNEAPOLIS TRUST COMPANY,
By A. B. Whitney, Its Vice President.

Attest: H. VERDELIN,
Its Assistant Secretary.
(Corporate Seal)

H. J. Kuhlman
C. Ryan

19 State of New York,
County of New York—ss.

On this 23 day of Jan., 1928, before me, a Notary Public within and for said county and state personally appeared Edward Bruce Douglas to me personally known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

P. J. HUBBARD,
Notary Public Queens County 804
Register's Queens County No. 3562
(Notarial Seal) County Clerk's N. Y. County No. 567
Register's Number N. Y. County No. 9416
Commission expires March 30th, 1929.

State of Minnesota,
County of Hennepin—ss.

On this 10th day of December, 1927, before me a notary public within and for said county, personally appeared A. B. Whitney and H. Verdelin to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Secretary respectively, of First Minneapolis Trust Company, successor by consolidation to Minneapolis Trust Company, the corporation named in the foregoing instrument and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said A. B. Whitney and said H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

H. J. KUHLMAN,
(Notarial Seal) Notary Public, Hennepin County, Minn.
My Commission expires July 16th, 1931.

Nos.	Description	Rate	Due	Coupons maturing	& Subsequent attached	Par Value
136/8	City of Bend, Oregon					
125,121/2	General Obligation Water Bond	5½	9/ 1/34	3/1/28	"	6000.
56/60	Carlton Co. Minn. Road Bonds	6	7/ 1/30	1/1/28	"	5000.
2	Chippewa Co. Minn.		11/ 1/28			
18	Public Drain. Ditch Bond	6	11/ 1/29	5/1/28	"	2000.
30	Chippewa Co. Minn.					
28,29	School Bond	6	9/ 1/36	3/1/28	"	2000.
M8286/90	Cleveland Electric Illuminating Co. Gen. Mtg. Gold Bond Ser. B	5	10/ 1/61	4/1/28	"	5000.
M88913/5 M26485 69383 M91399 M91400 M57979	Great Northern Railway Co. General Mtg. Gold Bond, Series A	7	7/ 1/36	1/1/28	"	8000.
1289-90 1291/2, 1306	Marquette, Houghton & Ontonagon Ry. Co. Mtg. Bond	6	4/ 1/35	4/1/28	"	5000.
806/10	Minneapolis Gas Light Co. Secured Gold Note	6	2/ 1/30	2/1/28	"	5000.
721/5	Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. Equip. Trust. Ser. M	4½	11/ 1/33	5/1/28	"	5000.
1729/33	Buffalo Creek R. R. Co. 1st and Ref. Mtg. Coupon Gold Bond	5	1/ 1/61	1/1/28	"	5000.
M4787/89	Bell Tel Co. of Pa,	5	10/ 1/60	4/1/28	"	3000.
7887,7889	Burlington, Cedar Rapids & Northern Ry. Co. Iowa, Minn. & Dakota Div. 1st Mtg. Consolidated Bond	5	4/ 1/34	4/1/28	"	2000.
1896	Minnesota Transfer Ry. Co. 1st Mtg. Gold Bond	5	8/ 1/46	2/1/28	"	1000.
M2568/72	Montgomery Ward Properties 1st Mtg. Gold Bond	5	5/ 1/46	5/1/28	"	5000.
M2593/4 M3880 M3697/8	New Orleans, Texas & Mexico Ry. Co. 1st Mtg. Gold Bond, Series C	5	8/ 1/56	2/1/28	"	5000.
M948/52	Otter Tail Power Co. Gen. Mtg. Gold Bond, Ser. D.	5½	1/ 1/45	1/1/28	"	5000.
21 M978/80	Otter Tail Power Co. Gen. Mtg. Gold Bond. Ser. E	5	10/ 1/46	4/1/28	"	3000.
M17999	Pacific Fruit Express Co. Equip. Trust Ser. A	7	6/ 1/32	6/1/28	"	1000.
19/26	Philadelphia Suburban Counties Gas & Elec. Co. 1st and Refunding Mtg. Gold Bond	4½	5/ 1/57	5/1/28	"	8000.
M2338/42	Powell River Co. Ltd Serial Gold Note	5	2/ 1/31	2/1/28	"	5000.
D103/5, D118	St. Paul Gas Light Co. General and Refunding Mtg. Gold Bond, Ser. B	5½	6/ 1/54	6/1/28	"	7000.
233/240 249/50	St. Paul Union Depot Co. Consolidated Mtg. Bond	4	5/ 1/44	5/1/28	"	10000.
M10831/35	Southwestern Gas & Electric Co. 1st Mtg. Gold Bond, Series A	5	1/ 1/57	7/1/28	"	5000.
M187	Stimson Building, First Mortgage Gold Bond	6	2/ 1/36	2/1/28	"	1000.

	[illegible]	Great Northern Railway					
	60383 M91399 M91400 M57979	Co. General Mtg. Gold Bond, Series A	7	7/ 1/36	1/1/28	"	8000.
	1289-90 1291/2, 1306	Marquette, Houghton & Ontonagon Ry. Co. Mtg. Bond	6	4/ 1/35	4/1/28	"	5000.
	806/10	Minneapolis Gas Light Co. Secured Gold Note	6	2/ 1/30	2/1/28	"	5000.
	721/5	Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. Equip. Trust. Ser. M	4½	11/ 1/33	5/1/28	"	5000.
	1729/33	Buffalo Creek R. R. Co. 1st and Ref. Mtg. Coupon Gold Bond	5	1/ 1/61	1/1/28	"	5000.
	M4787/89	Bell Tel Co. of Pa.	5	10/ 1/60	4/1/28	"	3000.
	7887,7889	Burlington, Cedar Rapids & Northern Ry. Co. Iowa, Minn. & Dakota Div. 1st Mtg. Consolidated Bond	5	4/ 1/34	4/1/28	"	2000.
	1896	Minnesota Transfer Ry. Co. 1st Mtg. Gold Bond	5	8/ 1/46	2/1/28	"	1000.
	M2568/72	Montgomery Ward Properties 1st Mtg. Gold Bond	5	5/ 1/46	5/1/28	"	5000.
	M2593/4 M3880 M3697/8	New Orleans, Texas & Mexico Ry. Co. 1st Mtg. Gold Bond, Series C	5	8/ 1/56	2/1/28	"	5000.
	M948/52	Otter Tail Power Co. Gen. Mtg. Gold Bond, Ser. D.	5½	1/ 1/45	1/1/28	"	5000.
21	M978/80	Otter Tail Power Co. Gen. Mtg. Gold Bond. Ser. E	5	10/ 1/46	4/1/28	"	3000.
	M17999	Pacific Fruit Express Co. Equip. Trust Ser. A	7	6/ 1/32	6/1/28	"	1000.
	19/26	Philadelphia Suburban Counties Gas & Elec. Co. 1st and Refunding Mtg. Gold Bond	4½	5/ 1/57	5/1/28	"	5000.
	M2338/42	Powell River Co. Ltd Serial Gold Note	5	2/ 1/31	2/1/28	"	5000.
	D103/5, D118	St. Paul Gas Light Co. General and Refunding Mtg. Gold Bond, Ser. B	5½	6/ 1/54	6/1/28	"	7000.
	233/240 249/50	St. Paul Union Depot Co. Consolidated Mtg. Bond	4	5/ 1/44	5/1/28	"	10000.
	M10831/35	Southwestern Gas & Electric Co. 1st Mtg. Gold Bond, Series A	5	1/ 1/57	7/1/28	"	5000.
	M187	Stimson Building, First Mortgage Gold Bond	6	2/ 1/36	2/1/28	"	1000.
	M355/59	Tri State Land Co. 1st Mtg. Serial Gold Bond	5½	5/ 1/39	5/1/28	"	5000.
	576/9	Twin City Trading Co. 1st Mtg. Gold Bond	5½	4/ 1/28	4/1/28	"	4000.
	M2246 M2205 M1063/64	Union Trust Bldg. 1st Mtg. Leasehold Serial Gold Bond	5½	12/ 1/45 12/ 1/38	6/1/28	"	4000.
	3478/82	Utica Gas & Electric Co. 30 Yr. General Mtg. Gold Bond, Ser. D.	5	4/ 1/56	4/1/28	"	5000.
							$128000.00

22 Exhibit III.

This Agreement Made in triplicate this 16 day of March, A. D. 1928, by and between Edward B. Douglas, of Deephaven, Hennepin County, Minnesota, party of the first part, and First Minneapolis Trust Company, a corporation under the laws of the State of Minnesota, with its principal place of business in the City of Minneapolis, as Trustee (and hereinafter for brevity sometimes called the "Trustee"), party of the second part, and Florence S. Douglas, wife of the party of the first part, party of the third part,

Witnesseth As Follows:

That in consideration of one (1.00) dollar and other valuable consideration to the party of the first part paid by the party of the second part, the receipt and sufficiency whereof are hereby acknowledged, the party of the first part hereby grants, bargains, sells, assigns, conveys, transfers and sets over unto the party of the second part, as Trustee, all those certain securities and items of property, specifically described and set forth in a schedule marked Exhibit "A" hereto attached and hereby made a part hereof, and the party of the first part may at any time hereafter, if he so elect, transfer and convey by proper instrument and deliver to the party of the second part, as Trustee hereunder, other items of property and any property so hereafter transferred, conveyed and delivered shall be described in a supplementary receipt executed by the party of the second part and shall be held by it under the terms of this agreement in the same manner as if such property had been included in the transfer and conveyance evidenced by this agreement. All of the property described in said Exhibit "A" and all property, if any, so hereafter conveyed to the party of the second part as Trustee hereunder, together with all changes therein and investments or reinvestments of items thereof hereafter made, is hereinafter designated as the "Trust Estate".

To Have and To Hold the said Trust Estate with all the privileges and appurtenances thereunto belonging to the party of the second part as Trustee, its successors and assigns, for its and their use, but in trust nevertheless as follows, and subject to the following conditions:

The Trustee shall hold, manage and control the Trust Estate until maturity or prior redemption of the various items thereof, or until a sale or sales of any of the various items thereof be deemed advisable by it after due investigation, or until termination of this trust in

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accordance with the terms hereof; shall invest and reinvest the principal proceeds arising therefrom in property as hereinafter provided; shall collect, receive and receipt for the income, interest and profits arising therefrom; and shall apply and distribute the income and principal as follows:

First. From the net income arising therefrom the Trustee shall pay from time to time when and as the same shall become payable, the premiums on those certain two life insurance policies on the life of the party of the first part, aggregating in amount of insurance $65,000 and one-fifth (1/5) of the premium on the life insurance policy on the life of the party of the first part in the amount of $10,000, which policies are listed in Exhibit "B" hereto attached, and hereby made a part hereof, and shall pay the remaining net income therefrom unto Florence S. Douglas, party of the third part, in monthly installments as equal as possible, as long as she shall live, commencing the first day of April, 1928, without regard to any change of status of party of the third part.

Upon the decease of said Florence S. Douglas, the Trustee shall distribute from said Trust Estate items thereof, selected by the Trustee, in an amount aggregating at their then fair market value as determined by the Trustee, the sum of $217,000 to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last Will of said Florence S. Douglas, or in the absence of a will of said Florence S. Douglas disposing thereof, then to her then living heirs at law, determined according to the [interstate] laws of the State of Minnesota then in force, and the residue of said Trust Estate after the distribution of said items aggregating in value $217,000 as aforesaid, shall then be transferred, set over, delivered and distributed by said Trustee to said Edward B. Douglas, if he be then living, but if he be then deceased, said residue shall be distributed by said Trustee to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last will of said Edward
24 B. Douglas, or in the absence of a will of said Edward B. Douglas disposing thereof, then to his then living heirs at law, determined according to the intestate laws of the State of Minnesota then in force.

The party of the first part shall, immediately upon the execution of this agreement, cause the insurance policies listed in Schedule "B" to be changed so that the beneficiary in each of said policies shall be Florence S. Douglas abso-

lutely, without power of change of beneficiary reserved to the party of the first part during the lifetime of the party of the third part, except that as to the policy in the amount of $10,000, the change of beneficiary, as aforesaid, shall be to the extent of one-fifth thereof in the name of Florence S. Douglas, as aforesaid. In the event that the party of the first part shall fail or refuse to make such change of beneficiary, or in the event that the policies lapse or are cancelled for any reason other than the nonpayment of premiums thereon, then upon the decease of said Florence S. Douglas, the party of the second part shall distribute in the manner and to the persons designated by the said Florence S. Douglas in her will or in the event that she die without leaving a last will, then to the persons who are her then living heirs at law determined according to the intestate laws of the State of Minnesota then in force, the sum of $284,000 in lieu of $217,000 as therein provided. If any one or more of the said policies are not so changed or lapse or are cancelled, other than for the nonpayment of premiums, then the sum of $217,000 mentioned in said paragraph to be distributed upon the death of Florence S. Douglas, shall be increased by the sum represented by such policy or policies which have not been changed as aforesaid or have lapsed or have been cancelled.

Second. By the term "net income" hereunder shall be meant the income and interest arising from said Trust Estate, exclusive of the profits realized from the sale of any of the items thereof and exclusive of stock dividends (such profits and stock dividends being counted a part of the principal thereof, to be added thereto) and less any necessary charges and expenses paid or incurred in connection with the management and protection of the Trust Estate and the Trustee's proper compensation for its services hereunder.

Third. The property constituting said Trust Estate shall be held in the name of the party of the second part as Trustee under this agreement and shall constantly be shown on its books and records to be a part of said Trust Estate, and all funds belonging thereto shall be deposited in its name as Trustee.

Fourth. The party of the first part during his lifetime and the party of the third part shall have access at all reasonable times to the books and records of the party of the second part insofar as they relate to said Trust Estate and the Trustee shall, during the month of March each year,

make a written report as to the condition of said Trust Estate to the party of the first part during his lifetime and to the party of the third part hereunder, said report to contain a complete inventory and description of the securities and properties belonging to said Trust Estate and a complete statement of the principal and income, receipts and disbursements in connection therewith.

Fifth. This trust can be amended or revoked only upon receipt by the party of the second part of written notice delivered to the Trustee of such amendment or revocation signed and acknowledged before a notary public or other officer authorized under the laws of the State of Minnesota to take acknowledgments by both the party of the first part and the party of the third part, which notice may be contained in one instrument signed and acknowledged by both parties, or in two concurrent instruments, one signed and acknowledged by the party of the first part and one by the party of the third part.

Sixth. The Trustee may, at the risk of the Trust Estate, continue to hold any property listed in said Exhibit "A" although the same shall not be of the character authorized by the laws of the State of Minnesota for trust investments, and it shall likewise have full power and authority to sell, dispose of, call in and change any of the same and any securities or other items that may at any time or from time to time constitute a part of said Trust Estate, and to invest and reinvest the Trust Estate in any income producing property which in its discre-
26 tion may be deemed safe and for the best interests of the Trust Estate, and the Trustee shall not be restricted to securities of the character authorized by the laws of the State of Minnesota for trust investments.

Seventh. The party of the second part as Trustee may consent to the extension, reorganization, or reincorporation of any corporation, stock in which may at any time form a part of the Trust Estate and may accept in lieu of such stock the stock of any reorganized or reincorporated corporation, and the said Trustee shall have the same power with respect to any stock at any time forming a part of the Trust Estate as the absolute owner of such stock would have and shall exercise the same judgment and discretion as owners acting for themselves, and in case of any insolvency or foreclosure in which the Trust Estate may have an interest, the Trustee may participate or join in any creditors' agreement or place the interest of the Trust Estate in the hands of

any reorganization committee and in such case the Trustee may participate in any syndicate or other arrangement and may take and hold any form of property for the purpose of protecting the interests of the Trust Estate therein.

Eighth. The party of the second part as Trustee shall have and it is hereby given full power and authority to collect and receive all sums of money when and as they may become due by the terms of or under or by reason of the evidences of indebtedness and other instruments now or hereafter constituting a part of said Trust Estate; to invest and reinvest the same in such property as aforesaid; to sell and assign all of said property and any that may at any time become a part of said Trust Estate or come into its hands pursuant hereto, to sell, convey, demise, let, lease, ground lease, or exchange any real estate which may at any time become a part of said Trust Estate, investing and reinvesting in properties as aforesaid the principal proceeds from the sale thereof as the same are received by it from time to time; and to make, execute and deliver any and all instruments necessary or incidental to the proper carrying out of this agreement in every respect.

Ninth. The party of the second part as Trustee shall receive for its services in collecting interest, income and profits hereunder, in making disbursements as authorized herein, in accounting as aforesaid, and in investing and reinvesting funds, 3% of the income collected from all securities and property hereby or hereafter assigned to it and from all investments and reinvestments of trust funds hereunder made by it, and 1% of the principal distributed upon final distribution thereof, it being understood that the party of the second part may purchase through its investment departments with the principal funds belonging to said Trust Estate securities of the kind herein authorized as they may be offered to the public without affecting its right to the compensation above specified for its services as Trustee.

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Tenth. No title in this Trust Estate or in the income therefrom shall vest in the party of the third part, and neither the principal nor the income of the Trust Estate shall be liable for the debts of the party of the third part, and she shall not have any powers to sell, assign, transfer, encumber, or in any other manner to anticipate or dispose of any interest in the Trust Estate (except as hereinbefore provided) or in the income produced thereby, prior to the actual distribution thereof to her by the Trustee.

Eleventh. The party of the first part hereby discloses to the party of the third part that immediately prior to the execution of this agreement he was the sole owner of and possessed of the immediate enjoyment of properties as hereinafter described or referred to; that the party of the first part is hereby making disposition of all of said assets as follows:

(1) By the conveyance under the terms hereof of the property described in the attached schedule marked Exhibit "A".

(2) By the conveyance to First Minneapolis Trust Company, as Trustee, of the property described in an agreement of even date herewith by and between the same parties as are parties to this agreement and by the terms of which party of the first part is the principal beneficiary thereunder.

(3) By the conveyance to First Minneapolis Trust Company, as Trustee, of the property described in an agreement of even date herewith between the party of the first part and said First Minneapolis Trust Company as Trustee under the terms of which Edward L. Camp and William E. Douglas are the two present principal beneficiaries.

(4) By the payment of existing debts of the party of the first part and of the party of the third part aggregating approximately $105,000.00 in amount, such payments to be made contemporaneously with the execution hereof or as soon thereafter as possible.

28 The party of the first part further discloses to the party of the third part that by the terms of an agreement dated September 12, 1923, by and between the party of the first part, Ida M. Douglas and Minneapolis Trust Company, as Trustee, the party of the first part, his heirs or assigns, will upon the death of Ida M. Douglas, receive certain properties described therein; that in the event that the party of the first part outlives Mahala D. Douglas, of Deephaven, Minnesota, the party of the first part will receive the property and home known as "Waldon" in the Village of Deephaven, Minnesota; and that the party of the first part may hereafter inherit properties of an indeterminable value from Mahala D. Douglas. The party of the first part declares that he has no property whatsoever other than the foregoing except only his personal belongings, such as clothing, jewelry, furniture, furnishings and an automobile.

The party of the third part acknowledges receipt of schedules describing in detail all of the properties conveyed by said three above described trust agreements, dated this date, and further acknowledges receipt of a detailed list of the securities now held by First Minneapolis Trust Company, as Trustee under said agreement dated September 12, 1923, and acknowledges that she is acquainted with and knows the present values of all of the property of party of the first part as hereinbefore described or referred to.

The party of the third part joins herein and has executed this indenture for the purpose, among others, of evidencing her consent to and approval of the terms hereof and she does hereby consent to and approve of the same, and she hereby grants, bargains, sells, assigns, conveys, transfers and sets over unto the party of the second part, as Trustee hereunder, all of her right, title and interest, if any, in and to all of the property described in the schedule hereto attached and marked Exhibit "A" and hereby conveyed. It is hereby agreed by and between the party of the first part and the party of the third part that the provisions herein made for the party of the third part are in lieu of, and in full settlement of, any and all dower right or rights in lieu of dower or statutory interests in the estate of the party of the first part as the same shall exist upon his decease,
29 whether now owned or hereafter acquired; and it is further agreed by and between the party of the first part and party of the third part that in the event that the party of the first part and the party of the third part shall hereafter be divorced or legally separated, the provisions herein made for her are in lieu of, and in full settlement of, any and all right to or claims for alimony, suit moneys, and attorney's fees and of any and all rights to or claims for separate maintenance and allowance for her support. The party of the third part further agrees to pay all debts and other obligations incurred by her after the date hereof whether for the purchase of necessities or for other purposes, and agrees to save the party of the first part harmless from any and all liabilities arising out of debts contracted or obligations incurred after the date hereof for any purposes whatsoever by the party of the third part.

Twelfth. In the event that an additional Federal income tax for the year 1926 or 1927, or both, shall be assessed against the party of the first part, individually or as co-trustee or otherwise, the party of the second part shall pay one-half (½) of such additional taxes assessed from the income of the Trust Estate to the extent that one-half of such addi-

tional taxes does not exceed $2500, and if one-half of such additional taxes exceeds the sum of $2500 then to the extent of such excess said one-half of such additional taxes shall be paid from the principal of the Trust Estate.

Thirteenth. Florence S. Douglas, party of the third part, agrees that she will at any time or times during the period of her lifetime, upon request of the party of the first part, execute and deliver to the party of the first part, or his agents, any and all deeds, mortgages or other instruments affecting the title to any real estate wheresoever situated and now or hereafter owned by the said Edward B. Douglas or in which he may now or hereafter have any right, title or interest for the purpose of conveying or mortgaging, as the case may be, her interest therein by way of dower or created by statute. Such deeds or mortgages shall, however, be in such form as not to obligate the party of the third part by reason of the terms thereof by any express warranties whatsoever or for the payment of any sums of money.

In the event that the party of the third part at any time during the existence of this trust refuses to execute any deeds or mortgages in the manner hereinabove in this section set forth, or fails so to do within sixty (60) days after receipt by her of a request for the execution of such instrument, together with the forms of such instruments, and fails to deliver the same to the party of the first part or his agents or to deposit the same in the post office at or nearest to the place at which she shall be at the time of the execution of such instrument, with postage prepaid and addressed to the party of the first part, in care of First Minneapolis Trust Company, Minneapolis, Minnesota, within said period of sixty (60) days, then and in any such event the party of the second part shall withhold all sums payable to the party of the third part under this trust agreement until and if she shall execute and deliver each such instrument so requested and shall pay all damages, if any, arising out of her failure or neglect to execute and deliver such instruments pursuant to the provisions of this section.

In Witness Whereof the party of the first part and the party of the third part have hereunto set their respective hands and seals and the party of the second part has

caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed the day and year first above written.

EDWARD B. DOUGLAS, (Seal)

FIRST MINNEAPOLIS TRUST COMPANY,
By William J. Stevenson,
Vice-President.
By H. Verdelin, Secretary.

FLORENCE S. DOUGLAS, (Seal)

In the presence of:
J. H. Colman,
Charles R. Miller,
J. H. Colman,) as to
J. C. Fink) F. S. D.

31 State of Minnesota,
County of Hennepin—ss.

On this 16 day of March, A. D. 1928, before me a Notary Public within and for said County, personally appeared Edward B. Douglas, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My commission expires July 2, 1929.

State of Minnesota,
County of Hennepin—ss:

On this 16th day of March, A. D. 1928, before me, a Notary Public within and for said County, personally appeared William J. Stevenson and H. Verdelin, to me personally known, who, being each by me duly sworn each did say that they are respectively the Vice-President and Ass't Secretary of First Minneapolis Trust Company, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said William J. Stevenson and H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My Commission expires July 2, 1929.

State of Minnesota,
County of Hennepin—ss:

On this 16 day of March, A. D. 1928, before me a Notary Public within and for said County, personally appeared Florence S. Douglas, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My Commission expires July 2, 1929.

32 State of Minnesota,
County of Hennepin—ss.

I, H. V. Bruchholz, Secretary Of First Minneapolis Trust Company, do hereby certify that the within instrument is a true and correct copy of the original Trust Agreement entered into by and between Edward B. Douglas and First Minneapolis Trust Company, and Florence S. Douglas: and that said trust agreement is in full force and effect; and that First Minneapolis Trust Company is now acting as trustee thereunder.

(Corporate Seal) H. V. BRUCHHOLZ.

Subscribed and sworn to before me this 7th day of Nov. 1929.

(Notarial Seal) PAUL REYERSON,
Notary Public, Hennepin County, Minn.

My Commission Expires Oct. 10th, 1933.

Exhibit A

Statement of Property

Par Value	Description	Rate	Interest payable	Interest paid to	Maturity	Cost or Appraised Value
Mortgages						
$2500.00	Anderson Otto #12719	5½%	Sept 1	9- 1-26	8- 1-29	$ 2500.00
6000.00	Dokkebakken Ole #11999	5½%	Dec 1	12- 1-26	10- 9-28	6000.00
5500.00	Sanden Claire M. #12132	5½%	Nov 1	11- 1-27	11- 1-28	5500.00
10000.00	Voght John #12029	5½%	Nov 1	11- 1-26	11- 1-28	10000.00
Bonds						
2000.00	Armour, So. Dak. City of Waterworks	5%	Jan 1 July 1	1- 1-28	7- 1-39	2093.10
1000.00	Bayport, Minn. Village of Funding	5%	Apr 1 Oct 1	10- 1-27	4- 1-39	1066.27
1000.00	Bayport, Minn. Village of Funding	5%	Apr 1 Oct 1	10- 1-27	4- 1-35	1033.60
1000.00	Becker Co. Minn. Pub. Dr. ditch	5¾%	June 1 Dec 1	12- 1-27	12- 1-37	1041.87
1000.00	Bemidji, Minn. City of Bridge	5%	Jan 1 July 1	1- 1-28	7- 1-34	1046.64
1000.00	Blue Earth Co. Minn. Ditch	6%	June 15 Dec 15	12-15-27	6-15-39	1138.80
1000.00	Blue Earth Co. Minn. Pub. Dr. Ditch	6%	June 15 Dec 15	12-15-27	6-15-39	1036.59
1000.00	Cottonwood Co. Minn. Pub. Drainage Ditch	5%	Feb 1 Aug 1	2- 1-28	2- 1-36	1077.06
1000.00	Cottonwood Co. Minn. Drain Ref.	5%	Mar 1 Sept 1	3- 1-28	9- 1-33	1019.72
1000.00	Cottonwood Co. Minn. County Road	5%	Mar 1 Sept 1	3- 1-28	9- 1-36	1036.19
5000.00	Dodge County, Minn. Road.	5%	June 1 Dec 1	12- 1-27	12- 1-30	4908.38
2000.00	Dodge County, Wisc. Highway	5%	Apr 1 Oct 1	10- 1-27	4- 1-34	2064.40
1000.00	Faribault County, Minn. Co. Drainage Ditch	5%	Jan 1 July 1	1- 1-28	7- 1-36-37	1044.42
1000.00	Freeborn County, Minn. Drain. Bond	5%	Apr 1 Oct 1	10- 1-27	10- 1-31	1013.15
2000.00	Goodhue County, Minn. Trunk Highway	5½%	Mar 15 Sept 15	3-15-28	9-15-35	2027.21
2000.00	Grand Forks, N. D. City of Refunding	5%	May 1 Nov 1	11- 1-27	5- 1-33	2023.00
$2000.00	Hardeman County, Texas Road	5%	May 11 Nov 11	11-11-27	5-11-33	$2052.54
1000.00	Hardeman County, Texas Road	5%	May 11 Nov 11	11-11-27	5-11-49	1055.45
1000.00	Harveys/D #38 North Dak. School Bldg.	6%	Jan 1 July 1	1- 1-28	7- 1-42	1092.20
1000.00	Isanti County, Minn. Pub. Ditch	6%	June 1 Dec. 1	12- 1-27	6- 1-40	914.82
2000.00	Kimball Ind. Cons. S/D #2 Brule Co. S. D. School	5%	Feb. 15 Aug. 15	2-15-28	2-15-43	2000.00
5000.00	Latimer County, Okla. Road	5¼%	June 1 Dec 1	12- 1-27	6- 1-47	5318.75
2000.00	Lenoir Co. N. C. Road and Bridge	5½%	Apr 1 Oct 1	10- 1-27	4- 1-33	2103.89

		Ref.	5%	Sept 1			
	1000.00	Cottonwood Co. Minn. County Road	5%	Mar 1 Sept 1	3- 1-28	9- 1-36	1036.19
	5000.00	Dodge County, Minn. Road.	5%	June 1 Dec 1	12- 1-27	12- 1-30	4908.38
	2000.00	Dodge County, Wisc. Highway	5%	Apr 1 Oct 1	10- 1-27	4- 1-34	2064.40
	1000.00	Faribault County, Minn. Co. Drainage Ditch	5%	Jan 1 July 1	1- 1-28	7- 1-36-37	1044.42
	1000.00	Freeborn County, Minn. Drain. Bond	5%	Apr 1 Oct 1	10- 1-27	10- 1-31	1013.15
	2000.00	Goodhue County, Minn. Trunk Highway	5½%	Mar 15 Sept 15	3-15-28	9-15-35	2027.21
	2000.00	Grand Forks, N. D. City of Refunding	5%	May 1 Nov 1	11- 1-27	5- 1-33	2023.00
34	$2000.00	Hardeman County, Texas Road	5%	May 11 Nov 11	11-11-27	5-11-33	$2052.54
	1000.00	Hardeman County, Texas Road	5%	May 11 Nov 11	11-11-27	5-11-49	1055.45
	1000.00	Harveys/D #38 North Dak. School Bldg.	6%	Jan 1 July 1	1- 1-28	7- 1-42	1092.30
	1000.00	Isanti County, Minn. Pub. Ditch	6%	June 1 Dec. 1	12- 1-27	6- 1-40	914.82
	2000.00	Kimball Ind. Cons. S/D #2 Brule Co. S. D. School	5%	Feb. 15 Aug. 15	2-15-28	2-15-43	2000.00
	5000.00	Latimer County, Okla. Road	5¼%	June 1 Dec 1	12- 1-27	6- 1-47	5318.75
	2000.00	Lenoir Co. N. C. Road and Bridge	5½%	Apr 1 Oct 1	10- 1-27	4- 1-33	2103.89
	1000.00	S. D. High, City of Los Angeles, Calif. Election	5%	Feb. 1 Aug 1	2- 1-28	8- 1-46	1078.95
	3000.00	Lyon County, Minn. Road	5¼%	June 1 Dec 1	12- 1-27	12- 1-30	3036.93
	2000.00	Meagher County, Mont. Road	5%	Jan 1 July 1	1- 1-28	7- 1-33	1801.93
	2000.00	Mercer County, N. Dak. Funding	5½%	June 1 Dec 1	3- 1-27	6- 1-33	2046.05
	5000.00	Miami, Okla. Board of Ed. School Bldg.	5%	Mar. 1 Sept 1	3- 1-28	3- 1-43	5126.69
	4000.00	Mpls. Trust Joint Stock Land Bank. Joint Farm Loan.	5%	May 1 Nov 1	11- 1-27	5- 1-53	4040.00
	8000.00	Mpls. Trust Joint Stock Land Bank. Farm Loan	5%	May 1 Nov 1	11- 1-27	11- 1-52	8200.00
	1000.00	Murray County, Minn. Jud. Ditch.	5%	Apr 1 Oct 1	10- 1-27	10- 1-37	1021.80
	2000.00	Marray County, Minn. Jud. Ditch	5%	Apr 1 Oct 1	10- 1-27	10- 1-37	2130.90
	5000.00	Oldham Ind. S/D #49 S. D. Bldg.	5¼%	May 1 Nov 1	11- 1-27	5- 1-43	5221.51
	2000.00	Prescott Pierce Co. Wisc. School Bldg. Bond S/D #1	5%	Mar 1 Sept 1	3- 1-28	3- 1-37	2080.00
	1000.00	Pine County, Minn. cons. S/D #24 Funding	7%	Mar 1 Sept 1	3- 1-28	9- 1-36	1067.50
	1000.00	Polk Co. Minn. Ind S/D #3	6%	May 1 Nov 1	11- 1-27	5- 1-35	1022.41

35	$2000.00	Porto Rico Govt. Of Pub. Imprv.	5%	Jan 1 July 1	1- 1-28	7- 1-51	$2177.50
	1000.00	Ramsey County, Minn. Road	5%	Apr 1 Oct 1	10- 1-27	10- 1-33	1031.40
	17000.00	Ramsey County, Minn. Road and Bridge	4¾%	June 1 Dec 1	12- 1-27	6-1-42	17760.75
	1000.00	Red Lake County, Minn. Refunding	6%	Jan 1 July 1	1- 1-28	7- 1-40	1000.00
	1000.00	Redwood Co. Minn. Pub. Dr. Ditch	6%	June 1 Dec. 1	12- 1-27	12- 1-35	1042.20
	2000.00	Renville County, Minn. Pub. Dr. Ditch	5%	Feb. 1 Aug. 1	2- 1-28	2- 1-39	2052.80
	1000.00	St. Cloud, Minn. Waterworks	5%	Jan 1 July 1	1- 1-28	7- 1-39	1043.00
	2000.00	St. Louis Co. Minn. Ind. S/D #12	5%	Mar 2 Sept 2	3- 2-28	9- 2-29	2004.53
	1000.00	Sibley County, Minn. Pub. Dr. Ditch	5¾%	Feb. 1 Aug. 1	2- 1-28	2- 1-35	1002.38
	2000.00	State of Louisiana, Bossier Parrish, cons. road Dist.	4½%	Mar 1 Sept 1	3- 1-28	3- 1-52	1970.60
	1000.00	State of South Dakota Rur. credit Series L.	5%	June 1 Dec 1	12- 1-27	6- 1-32	938.80
	6000.00	Spencer Ind.-Cons. S/D #2 So. Dak. School Bldg.	5%	Apr 1 Oct 1	10- 1-27	4- 1-43	6152.79
	1000.00	Steele County, Minn. Ind. S/D #63 School Bond.	5½%	May 1 Nov 1	11- 1-27	5- 1-35	1000.00
	1000.00	Swift County, Minn. Road.	6%	Feb. 1 Aug. 1	2- 1-28	8- 1-30	1024.28
	5000.00	Swift County, Minn. Ditch	5%	Apr 1 Oct 1	10- 1-27	4- 1-38	5153.30
	3000.00	Thief River Falls, City of Elec. Light Impr.	5½%	Apr 2 Oct 2	10- 2-27	10- 2-31	3169.40
	1000.00	Traill County, N. Dak.	5½%	Jan 1 July 1	1- 1-28	1- 1-36	1034.27
	1000.00	Traverse County, Minn. Road	5¾%	June 1 Dec 1	12- 1-27	12- 1-30	1016.15
	1000.00	Wabasha County, Minn. Trunk Hgy. Reimbursement.	5%	Mar 1 Sept 1	3- 1-28	9- 1-31	1027.83
36	$7000.00	Walworth Co. Wisc. Highway Imp.	5%	Apr 1 Oct 1	10- 1-27	4- 1-33	7303.80
	2000.00	Wilkin County, Minn. Highway	5%	Mar 1 Sept 1	3- 1-28	9- 1-36	$2047.53
	6000.00	Wyndmere, N. Dakota School Bond Spec. S/D Bldg.	5%	Jan 1 July 1	1- 1-28	6- 1-43	6075.95
	12000.00	Zanesville, Ohio City Of School.	5%	Apr 1 Oct 1	10- 1-27	10- 1-41	12000.00
	Stock			Dividend Payable	Dividend paid to	No. Shs.	
	11000.00	Archer Daniels Midland Co. Pfd. at 100 a sh.	7%	Feb. 1 May 1 Aug 1 Nov 1	2- 1-28	110	$10780.00
		Archer Daniels Midland Co. Com. no par		Feb 1 May 1 Aug 1 Nov 1	2- 1-28	250	9750.00
	7600.00	The Canadian Elevator Co. Pfd. at 100 a sh.	7%	Sept 1	9-19-27	76	7600.00

	7600.00	The Canadian Elevator Co. Pfd. at 100 a sh.	7%	Sept 1		9-19-27	76	7600.00
	22150.00	The Canadian Elevator Co. Com. at 100. a sh.		Sept. 1		9-19-27	221½	22150.00
	22150.00	The Canadian Elevator Co. Com. at 100 a sh.		Sept 1		9-19-27	221½	37250.00
	3100.00	First National Bank Mpls. Cap at 100. a sh.		Jan 1 Apr 1 July 1 Oct 1		1- 1-28	31	8525.00
		McCall Corporation Com. no par.					54	2160.00
		McCall Corporation Com. no par		Feb 1 May 1 Aug 1 Nov 1		2- 1-28	300	2750.00
		McCall Corporation Com. no par		Feb 1 May 1 Aug 1 Nov 1		2- 1-28	200	5000.00
	510.00	McCall Corporation Com.		Feb 1 May 1 Aug 1 Nov 1		2- 1-28	17	510.00
37	$ 735.00	McCall Corporation. Com. no par.		Feb 1 May 1 Aug 1 Nov 1		2- 1-28	25	$ 735.00
		Munsingwear Inc. Cap. no par		Mar 1 June 1 Sept 1 Dec 1		3- 1-28	250	10500.00
	12500.00	Northern Elevator Co. Ltd. Cap. at 100. a sh.				6-30-27	125	5208.34
		National Bellas Hess Co. Inc. Com. at no par					1023	34583.79
	12500.00	The Northern Elevator Co. Ltd Cap. at 100. a sh.				6-26-27	125	12500.00
	7500.00	Piper River Lumber Co. Com. at 100. a sh.				2-23-27	75	7500.00
		Quaker Oats Company Com. no par		Jan 15 Apr 15 July 15 Oct 15		1-15-28	1010	57969.13
	11800.00	The Quaker Oats Co. Pfd. at 100. a sh.		Mar 1 June 1 Sept 1 Dec 1		3- 1-28	118	11800.00
		The Quaker Oats Co. Com. at 100. a sh.		Jan 15 Apr 15 July 15 Oct 15		1-15-28	1008	25450.00
						6-23-27	126	12900.00
	12600.00	Security Elevator Co. Ltd. Cap at 100. a sh.						
	8300.00	The Winnipeg Elevator Co. Ltd. Cap. at 100. a sh.				9-14-27	83	8300.00
	8300.00	Winnipeg Elevator Co. Cap. at 100. a sh.				9-15-27	83	11425.00

38 Schedule B

Insurance		Par Value
$ 50000.00	Conn. Mutual Life Ins. Co. Pol. #465093	$ 50000.00
15000.00	N. W. Nat. Life Ins. Co. Pol. #175227	15000.00
2000.00	N. W. Mutual Life Ins. Co. Pol. #1453487 (1/5 interest)	2000.00

Exhibit IV

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp
(Date received)
Received Coll. of Int. Rev. Dist. Minn. Apr. 8 1931 St. Paul Office

☐ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

COPY
Original Claim Filed

State of Minnesota } ss.
County of Hennepin }

Name of taxpayer or purchaser of stamps Edward B. Douglas

Type or Print

Business address c/o First Minneapolis Trust Company, 115 S. Fifth St. Minneapolis, Minn.
(Street) (City) (State)

Residence.....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Minnesota

2. Period (if for income tax, make separate form for each taxable year) from January 1st, 1928, to December 31, 1928

3. Character of assessment or tax Income taxes

4. Amount of assessment, $2841.61; dates of payment March 30, 1931

5. Date stamps were purchased from the Government.....

6. Amount to be refunded 2841.61 $.....

7. Amount to be abated (not applicable to income or estate taxes) ..... $.....

8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1928, on March 30, 1933

The deponent verily believes that this claim should be allowed for the following reasons:

The amount claimed for refund is an additional assessment for the calendar year 1928 of $2581.74 and interest arising by reason of the erroneous inclusion in taxpayer's income for the calendar year 1928 of the income of the Ida M. Douglas Trust and a portion of the income of the Florence Douglas Trust distributable and distributed to Ida M. Douglas and Florence Douglas, the beneficiaries thereof. Reference is here made to the report of the Examining Revenue Agent for the calendar year 1928, dated October 16, 1930, in the case of Edward B. Douglas, and references therein made.

Edward B. Douglas contends that the trusts in question were irrevocable and that the income and the trust corpus was beyond his control and that the income thereof was, therefore, not taxable to him.

(Attach letter size sheets if space is not sufficient)

(Seal) EDWARD B. DOUGLAS,
Signed By FIRST MINNEAPOLIS
TRUST COMPANY,

L. H. R. His Attorney-in-fact.
By Lew Wallace, Asst. Secretary.

Sworn to and subscribed before me this 1st day of April, 1931.

L. H. ROUSE, ...
(Signature of officer administering oath) (Title)

L. H. ROUSE,
Notary Public, Hennepin County, Minn.

My commission expires March 15th, 1938.

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40 Exhibit V.

Treasury Department
Washington

Office of
Commissioner of Internal Revenue

First Mpls. Trust Co.

Received
Dec. 7-1931.

IT:C:CC-5
CCP

A M P M
7 8 9 10 11 12 1 2 3 4 5 6

Dec. 4, 1931

Mr. Edward B. Douglas,
c/o First Minneapolis Trust Company,
115 South First Street,
Minneapolis, Minnesota.

In re: Refund Claim for year 1928
Amount $2,841.61

Sir:

Your claim for refund of taxes, above referred to, was disallowed by the Commissioner on a schedule dated December 4, 1931.

Respectfully,

J. C. WILMER,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

1203M

L

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Exhibit VI.

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

	Refund of Tax Illegally Collected.
	Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
	Abatement of Tax Assessed (not applicable to estate or income taxes.)

Collector's Stamp

(Date received)

Received
Coll. of Int. Rev.
Dist. Minn.
Dec 28 1931
St. Paul Office

State of.....
County of..... } ss.

Name of taxpayer or purchaser of stamps: Edward J. Douglas

Type or Print

Business address: % First Minneapolis Trust Company
(Street) 115 S. Fifth St. Minneapolis, Minnesota. (City) (State)

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Minnesota
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1st, 1927, to December 31, 1927
3. Character of assessment or tax Income taxes
4. Amount of assessment, $2,094.78; dates of payment June 4, 1931
5. Date stamps were purchased from the Government.....
6. Amount to be refunded.....$2,094.78
7. Amount to be abated (not applicable to income or estate taxes) ..... $.....
8. The time within which this claim may be legally filed expires, under Section 284 of the Revenue Act of 1926, on June 4th, 1934

The deponent verily believes that this claim should be allowed for the following reasons:

The amount claimed for refund is an additional assessment for the calendar year 1927 of $2,094.78, being a deficiency for that year of $1,758.38 and interest arising by reason of the erroneous inclusion in taxpayer's income for the calendar year 1927 of the income of the Ida M. Douglas Trust distributable and distributed to Ida M. Douglas, the beneficiary thereof. Reference is here made to Bureau letter dated March 5, 1931 (IT:AR:D-1HBA-60D.) and to copy of trust agreement dated September 12, 1923, between Edward Bruce Douglas, Ida M. Douglas and Minneapolis Trust Company, on file with the Bureau.

Edward Bruce Douglas contends that the trusts in question were irrevocable, that he received none of the income upon which he has been taxed by virtue of the Bureau action, as expressed in its letter aforesaid, and that the income of the trust was not taxable to him.

(Attach letter size sheets if space is not sufficient)

EDWARD B. DOUGLAS,
By FIRST MINNEAPOLIS TRUST COMPANY,
His Attorney-in-fact.

.....

Sworn to and subscribed before me this ..... day of June, 1931.

....., ...
(Signature of officer administering oath) (Title)

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42 Endorsed: Complaint Filed December 26, 1931, Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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43 (Summons and Marshal's Return.)

United States District Court, Third Division, District of Minnesota.

The President of the United States of America.

To the Marshal of the District of Minnesota—Greeting:

You Are Hereby Commanded, That you summon Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, late of your District, if he may be found therein, so that he be and appear within 20 days after service of this summons before the United States District Court for the District of Minnesota, at St. Paul, next to answer to the complaint filed therein by Edward B. Douglas, and have you then and there this writ.

Witness, the Honorable John B. Sanborn, United States District Judge at St. Paul this 26th day of December, A. D. 1931.

(Seal)

JOEL M. DICKEY, Clerk,
By Margaret L. Mullane,
Chief Deputy Clerk.

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44 Return on Service of Writ.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota by handing to and leaving a true and correct copy thereof with A. M. Heimbach, his Deputy, authorized to receive services per-

sonally at St. Paul, Minn. in said District on the 28th day of December, A. D. 1931.

BERNARD ANDERSON,
U. S. Marshal
By O. H. Bakke, Deputy.

M. Fees.	
Summons	2.00
Mileage	.06
	2.06

Endorsed: Filed in U. S. District Court on Dec. 30, 1931.

---

45 (Stipulation Extending Time to File Answer.)

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective attorneys, that the time within which the defendant may answer plaintiff's complaint is extended for a period of thirty (30) days from the date hereof.

Dated this 15th day of January, 1932.

JUNELL, OAKLEY, DRISCOLL & FLETCHER,
LELAND W. SCOTT,
Attorneys for Plaintiff.

LEWIS L. DRILL,
Attorney for Defendant.

Endorsed: Stipulation. Filed Jan. 13, 1932. Joel M. Dickey, Clerk. By William H. Eckley, Deputy.

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46 (Stipulation Further Extending Time to File Answer.)

It Is Hereby Stipulated And Agreed by and between the parties hereto, through their respective attorneys, that the time within which the defendant may answer plaintiff's complaint herein is extended for a period of sixty (60) days from the date hereof.

Dated this 3rd day of February, 1932.

LELAND W. SCOTT,
JUNELL, OAKLEY, DRISCOLL & FLETCHER,
Attorneys for Plaintiff.

LEWIS L. DRILL, G.
Attorney for Defendant.

Endorsed: Stipulation. Filed Feb. 3, 1932. Joel M. Dickey, Clerk. By William H. Eckley, Deputy.

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47 Answer.

Now comes the defendant, Levi M. Willcuts, as Collector of Internal Revenue in and for the District of Minnesota, and for his answer to the complaint of the plaintiff herein denies each and every allegation thereof.

Wherefore, the defendant prays that the plaintiff take nothing herein, that the complaint be dismissed and for such other and further relief as to the Court may seem proper.

LEWIS L. DRILL,
United States Attorney and
Attorney for Defendant.

State of Minnesota,
County of Ramsey—ss.

Levi M. Willcuts, being first duly sworn, upon oath says that he is the Collector of Internal Revenue in and for the District of Minnesota, the defendant in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to matters stated therein on information and belief, and as to those matters he believes it to be true.

LEVI M. WILLCUTS.

Subscribed and sworn to before me this 29th day of March, [1934].

(Seal)

WILLIAM J. DIFFLEY,
Notary Public Ramsey County,
Minnesota.

My commission expires Feb. 14, 1935.

Due service of the within Answer is hereby admitted this 30th day of March, 1932.

LELAND W. SCOTT,
Attorney for Plaintiff.

Endorsed: Answer. Filed April 2, 1932. Joel M. Dickey, Clerk. By Margaret L. Mullane, Chief Deputy.

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48 Amended Answer.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. At Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Comes now the above-named defendant, Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, by his attorney, Lewis L. Drill, United States Attorney for the District of Minnesota, and for answer to the plaintiff's complaint in the above-entitled action and cause, admits, denies and alleges as follows:

I.

Admits the allegations of paragraph I.

II.

Admits the allegations of paragraph II.

III.

Admits the allegations of paragraph III.

IV.

Denies the allegations of paragraph IV, except that he admits that the plaintiff executed an agreement September 12, 1923, containing the terms and conditions disclosed in the copy of an agreement attached to the complaint as Exhibit 1; that he delivered the securities listed and described in Exhibit "A" attached to the agreement, to the Minneapolis Trust Company, and on November 6, 1927, he delivered the securities listed and described in Exhibit II of the Complaint, to the Minneapolis Trust Company; that the net income received from the securities so deposited with the Minneapolis Trust Company during the calendar year ending December 31, 1928, was $17,617.39; and consisted of the following items, to-wit: interest on tax-free covenant bonds, $9,260.96; tax paid at source on tax-free covenant bonds, $185.22; cash dividends, $6,441.96; other income, $1,914.47.

49 V.

Denies the allegations of paragraph V, except that he admits that the plaintiff executed an agreement March 16, 1928, containing terms and conditions identical with those disclosed in the copy of the agreement marked Exhibit III,

attached to the complaint; that the plaintiff delivered the securities listed and described in Exhibit "A" of the agreement, to the First Minneapolis Trust Company; that the net income received from the property so deposited with the First Minneapolis Trust Company during the calendar year ending December 31, 1928, was $28,619.95; and consisted of the following items, to-wit: interest on tax-free covenant bonds, $120.00; tax paid at source on tax-free covenant bonds, $2.40; cash dividends, $17,087.00; other income, $11,412.95.

VI.

Denies the allegations of paragraph VI, except that he admits that on March 15, 1929, the plaintiff made and filed a return with the defendant as Collector of Internal Revenue of the United States for the District of Minnesota, of income for the calendar year ending December 31, 1928, but alleges that the return disclosed the plaintiff's gross income for the taxable year to be $42,747.79; deductions, $3,418.20; and net income $39,329.59; also that the net income disclosed by the return did not include the net income of $17,617.39 earned and collected from the property deposited with the Minnesota Trust Company pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively; and that it did not include the net income of $28,619.95 earned and collected on the property deposited with the First Minneapolis Trust Company pursuant to the agreement signed by the plaintiff March 16, 1928.

VII.

Denies the allegations of paragraph VII, except that he admits that the plaintiff's return for the calendar year ending December 31, 1928, was audited and reviewed by the Commissioner of Internal Revenue of the United States October 16, 1930; that following its audit and review by said official the Commissioner notified the plaintiff that he had determined that the plaintiff was required to include in the return of his income for the calendar year ending December 31, 1928, the net income earned and collected from the property deposited with the Minneapolis Trust Company pursuant to the instrument signed September 12, 1923, and November 6, 1927, respectively, and $1,046.98 of the net income earned and collected from the property deposited with the First Minneapolis Trust Company pursuant to the instrument signed March 16, 1928; and the sum of $1,046.98 is that portion of the net income of $28,619.95 applied by the First Minneapolis Trust Company toward the payment of the premiums on the insurance policies described in

Exhibit III and Schedule "B" attached to the complaint. The defendant also admits that the Commissioner included the sum of $17,617.39 and the sum of $1,046.98 in the plaintiff's gross income for the calendar year ending December 31, 1928, and in determining the plaintiff's tax liability for said taxable year, and that the inclusion of the alleged sums increased the plaintiff's income tax liability for the calendar year ending December 31, 1928, over the amount reported in his return, $2,581.74, and that said additional tax with interest thereon amounting to $259.87, was assessed against the plaintiff in March, 1931.

VIII.

Admits the allegations of paragraph VIII.

IX.

Admits the allegations of paragraph IX.

For his answer to the second cause of action alleged in the plaintiff's complaint, the defendant admits, denies and alleges as follows:

X.

The defendant denies the allegations incorporated by reference in paragraph X except the allegations of paragraphs I, II and III.

XI.

The defendant denies the allegation of paragraph IX except that he admits that the net income earned and col-
51 lected upon the property delivered to the Minneapolis Trust Company pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively, for the calendar year ending December 31, 1927, was and is the sum of $12,610.52, and consisted of the following items, to-wit: dividends, $9,857.66; other income, $2,752.86.

XII.

Denies the allegations of paragraph XII, except that he admits that the plaintiff on March 15, 1928, made and filed a return with the defendant as Collector of Internal Revenue of the United States for the District of Minnesota, of income for the calendar year ending December 31, 1927, but alleges that the return reported the plaintiff's gross income for the taxable year to be $50,059.31, deductions $6,978.18, and net income $43,071.13; and did not include as a part of the plaintiff's gross income the net income of $12,610.52 earned and collected from the property deposited with the

Minneapolis Trust Company, pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively.

XIII.

Denies the allegations of paragraph XIII, except that he admits that the plaintiff's return for the calendar year ending December 31, 1927, was audited and reviewed by the Commissioner of Internal Revenue of the United States March 5, 1931; that following its audit and review by said official the Commissioner notified the plaintiff that he had determined that the plaintiff was required to include in the return of his income for the calendar year ending December 31, 1927, the net income of $12,610.52 earned and collected from the property deposited with the Minneapolis Trust Company pursuant to the instruments signed September 12, 1923, and November 6, 1927, respectively. The defendant also admits that the Commissioner included the sum of $12,610.52 in the plaintiff's gross income for the calendar year ending December 31, 1927, in determining the plaintiff's tax liability for said taxable year, and that the inclusion of the alleged sum increased the plaintiff's income tax liability for the calendar year ending December 31, 1927, over the amount reported in his return, $1,758.38, and that said additional tax with interest thereon amounting to $336.40 was assessed against the plaintiff in May, 1931.

52 XIV.

Admits the allegations of paragraph XIV.

XV.

Admits the allegations of paragraph XV.

For further and separate answer and defense to the plaintiff's First Cause of Action the defendant alleges:

I.

Prior to September 12, 1923, certain differences and disagreements arose between the plaintiff and his first wife, Ida M. Douglas, causing a separation or a divorce to appear imminent, and in order to settle the possible claims of the first Mrs. Douglas for separate maintenance, allowances for support, alimony, dower rights and statutory interests in his estate, the plaintiff agreed to pay her the sum of $15,000.00 per annum from September 1, 1923, until November 6, 1927, and the sum of $21,000.00 per annum from November 6, 1927, during the remainder of her lifetime.

II.

To secure the payment of the sums to be paid pursuant to the above mentioned agreement, the plaintiff on September 12, 1923, deposited in escrow securities of the par or estimated value of $330,000.00, and agreed to deposit such portion of the properties as he should thereafter receive from the estate of his father, Walter E. Douglas, under the provisions of his father's will, to the value of $120,000.00, in escrow with the Minneapolis Trust Company of Minneapolis, Minnesota, with instructions to pay the annual income therefrom accruing thereon in quarter annual installments to Ida M. Douglas, but reserved unto himself the right from time to time to substitute and change the securities with the consent and approval of his wife and to designate and determine in what securities the net income received in excess of the stipulated annual payments shall be invested, subject only to the approval of the Trust Company. In the agreement concerning the escrow deposit, it was and is provided that in case the net income from the securities shall not be sufficient at any time to make the stipulated annual payments, the plaintiff will, upon the request of the Trust Company, make good the deficiency; also that if he shall
53 fail to make good the deficiency the Trust Company may make up the deficiency from the sale of the securities or otherwise as it deems advisable. Upon full compliance with the terms and conditions of the escrow, the Trust Company is obliged to return the securities and property deposited with it to the plaintiff or his heirs or assigns.

III.

Shortly after the delivery of the above-mentioned securities to the Minneapolis Trust Company, the plaintiff's wife, Ida M. Douglas, obtained a divorce and the Court which rendered the decree confirmed the agreement of settlement made by the parties September 12, 1923, and adopted the provisions of the same as the Court's award of alimony and provision in settlement of the wife's dower rights and statutory interests in the estate and property of the plaintiff.

IV.

Following the rendition and entry of the decree of divorce between the plaintiff and his first wife, Ida M. Douglas, the plaintiff remarried one Florence S. Douglas.

V.

Prior to March 16, 1928, certain differences and disagreements arose between the plaintiff and his second wife, Flor-

ence S. Douglas, which made it appear reasonably certain that a separation or divorce would occur between the parties, and in order to settle and satisfy the possible claims and demands of the second Mrs. Douglas, for dower rights and statutory interests in his estate and any and all rights to or claims for alimony, suit moneys, attorney's fees, and of any and all rights to or claims for separate maintenance and allowance for support; and in consideration of the promise and agreement by Florence S. Douglas to pay all debts and other obligations incurred by her after March 16, 1928, for the purchase of necessities or for other purposes, and to save the plaintiff harmless from all liabilities arising out of debts contracted or obligations incurred by her after said date for any purpose whatsoever, the plaintiff agreed to deposit certain securities and items of property with the First Minneapolis Trust Company of Minneapolis, Minnesota, with instructions to apply the net income arising therefrom as follows:

(1) To pay the premiums on two life insurance poli-
54 cies covering the life of the plaintiff of the face value of $65,000.00, and one-fifth of the premium on a life insurance policy on the life of the plaintiff of the face value of $10,000.00 so long as Florence S. Douglas shall live;

(2) Upon the death of Florence S. Douglas, to distribute from such securities and items of property as the Trust Company shall select in an amount aggregating a fair market value of the sum of $217,000.00 to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last will of Florence S. Douglas;

(3) Subject to the performance of conditions (1) and (2) to transfer, set over, deliver and distribute the securities and items of property deposited to the plaintiff if he be then living, but if he be then deceased, to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with his will or in the absence of the will, to his heirs.

VI.

In addition to securing the performance of the terms and conditions of the agreement of March 16, 1928, it was and is provided in the escrow agreement that title to the securities and items of property shall not vest in Florence S. Douglas during the continuance of the escrow and that the agreement itself may be amended or revoked by the written notice of the parties delivered to the Trust Company.

VII.

The net income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement executed between the plaintiff and Ida M. Douglas during the calendar year ending December 31, 1928, amounted to the sum of $17,617.39, consisting of the following items, to-wit: interest on tax-free covenant bonds, $9,260.96; tax paid at source on tax-free covenant bonds, $185.22; cash dividends, $6,441.96; other income, $1,914.47.

55

VIII.

The net income received by the First Minneapolis Trust Company from the securities and items of property deposited pursuant to the agreement of the plaintiff and Florence S. Douglas during the calendar year ending December 31, 1928, amounted to the sum of $28,619.95, consisting of the following items, to-wit: interest on tax-free covenant bonds, $120.00; tax paid at source on tax-free covenant bonds, $2.40; cash dividends, $17,087.00; other income, $11,412.95.

IX.

In reporting his net income for the calendar year ending December 31, 1928, the plaintiff did not include in his gross income the sum of $17,617.39, collected by the Minneapolis Trust Company pursuant to the agreement between the plaintiff and Ida M. Douglas or any part of the sum of $28,619.95 collected by the First Minneapolis Trust Company pursuant to the agreement between the plaintiff and Florence S. Douglas.

X.

In determining the plaintiff's income for the calendar year ending December 31, 1928, the Commissioner of Internal Revenue included the income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement between the plaintiff and Ida M. Douglas, and the income received by the First Minneapolis Trust Company from the securities and items of property deposited pursuant to the agreement between the plaintiff and Florence S. Douglas to the extent of $1,046.98, representing the portion of said net income applied by the Trust Company towards the payment of the premiums on the policies of insurance mentioned in paragraph V hereof, in the plaintiff's gross income for said taxable period. The inclusion of the amounts in the plaintiff's gross income for the calendar year ending December 31, 1928, increased the plaintiff's income

tax for said taxable period $2,581.74, with interest thereon in the amount of $259.87. The additional tax was duly assessed in March, 1931.

56

XI.

March 30, 1931, the defendant demanded and received from the plaintiff the sum of $2,841.61 in full payment of the above-mentioned additional tax. April 8, 1931, the plaintiff filed with the Commissioner of Internal Revenue a claim for refund of the sum paid by the plaintiff to the defendant March 30, 1931.

XII.

September 4, 1931, the Commissioner of Internal Revenue disallowed the plaintiff's claim for refund and said action was correct and proper for amongst others the following reasons, to-wit:

(1) The agreements executed September 12, 1923, and November 6, 1927, respectively, are in effect pledges, securing the payment of alimony, maintenance and support money to the plaintiff's divorced wife, Ida M. Douglas, which payments are not allowable or proper deductions from the plaintiff's gross income for the calendar year 1928.

(2) The agreements executed September 12, 1923, November 6, 1927, and March 16, 1928, are not absolute and unconditional transfers but escrows that are terminable whenever the plaintiff shall have complied with the con[illegible]ns of the respective deposits. The Minneapolis Trust [illegible]pany and the First Minneapolis Trust Company are not trustees but agents of the plaintiff.

(3) The portion of the income applied by the First Minneapolis Trust Company towards the payment of premiums accruing upon the policies insuring the life of the plaintiff constitute taxable income received and returnable by the plaintiff.

(4) The alleged transfers are revocable. The securities and items of property delivered by the plaintiff to the Minneapolis Trust Company pursuant to the agreements of September 12, 1923, and November 6, 1927, remain subject to the possession, control and enjoyment of the plaintiff who is authorized to withdraw them with the consent of Ida M. Douglas, such consent being obligatory upon her part and not capable of being unreasonably withheld or refused.

(5) The income received from the securities and property deposited with the Minneapolis Trust Company
57 in so far as the same exceeds the amount of the annual payments stipulated to be made to Ida M. Douglas, is required to be held and accumulated for future distribution to the plaintiff.

XIII.

By reason of the matters hereinabove alleged, the additional tax of $2,841.61 was due and owing from the plaintiff and lawfully collected by the defendant.

For further and separate answer and defense to the plaintiff's Second Cause of Action the defendant alleges:

XIV.

The defendant refers to paragraphs I, II, and III of his first further and separate answer and by such reference incorporates the same as part of this defense.

XV.

The net income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement executed between the plaintiff and Ida M. Douglas during the calendar year ending December 31, 1927, amounted to the sum of $12,610.52, consisting of the following items, to-wit: dividends, $9,857.66; other income, $2,752.86.

XVI.

In reporting his net income for the calendar year ending December 31, 1927, the plaintiff did not include in his gross income the sum of $12,610.52, collected by the Minneapolis Trust Company pursuant to the agreement between the plaintiff and Ida M. Douglas.

XVII.

In determining the plaintiff's income for the calendar year ending December 31, 1927, the Commissioner of Internal Revenue included the income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement between the plaintiff and Ida M. Douglas. The inclusion of the amount of the plaintiff's gross income for the calendar year ending December 31, 1927, increased the plaintiff's income tax for said taxable period $1,758.38 with interest thereon in the amount of $336.40. The additional tax was duly assessed in May, 1931.

58

XVIII.

June 3, 1931, the defendant demanded and received from the plaintiff the sum of $2,094.78 in full payment of the above-mentioned tax.

XIX.

June 15, 1931, the plaintiff filed with the Commissioner of Internal Revenue a claim for refund of the sum paid by the plaintiff to the defendant on June 3, 1931.

XX.

The Commissioner of Internal Revenue has not allowed the plaintiff's claim for refund filed June 15, 1931, and has not taken any action in regard to the same for amongst others the following reasons, to-wit:

(1) The agreements executed September 12, 1923, and November 6, 1927, respectively, are in effect pledges securing the payment of alimony, maintenance and support money to the plaintiff's divorced wife, Ida M. Douglas, which payments are not allowable or proper deductions from the plaintiff's gross income for the calendar year 1927.

(2) The agreements executed September 12, 1923, and November 6, 1927, respectively, are not absolute and unconditional transfers but escrows that are terminable whenever the plaintiff shall have complied with the conditions of the respective deposits. The Minneapolis Trust Company is not the trustee but the agent of the plaintiff.

(3) The alleged transfers are revocable. The securities and items of property delivered by the plaintiff to the Minneapolis Trust Company pursuant to the agreements of September 12, 1923, and November 6, 1927, remain subject to the possession, control and enjoyment of the plaintiff who is authorized to withdraw them with the consent of Ida M. Douglas, such consent being obligatory upon her part and not capable of being unreasonably withheld or refused.

(4) The income received from the securities and property deposited with the Minneapolis Trust Company in so far as the same exceeds the amount of the annual payments stipulated to be made to Ida M. Douglas, is required to be held and accumulated for future distribution to the plaintiff.

59

XXI.

By reason of the matters hereinabove alleged the additional tax of $2,094.78 was due and owing from the plaintiff and was lawfully collected by the defendant.

Wherefore, the defendant having fully answered the complaint of the plaintiff herein, demands that the plaintiff's action be dismissed and that he recover his costs and disbursements.

LEWIS L. DRILL,
G.
United States Attorney.
Attorney for Defendant.

State of Minnesota,
County of Ramsey—ss.

Levi M. Willcuts, being first duly sworn, upon oath says that he is the Collector of Internal Revenue in and for the District of Minnesota, the defendant in the foregoing amended answer; that he has read the foregoing amended answer and knows the contents thereof; and that the same is true to his own knowledge except as to matters stated therein on information and belief, and as to those matters he believes it to be true.

LEVI M. WILLCUTS.

Subscribed and sworn to before me this 7th day of June, 1932.

E. M. HEIMBACH,
(Notarial Seal) Notary Public, Ramsey County, Minn.

My Commission Expires Oct. 1st, 1932.

Due service of the within Amended Answer is hereby admitted this 7th day of June, 1932.

JUNELL, OAKLEY, DRISCOLL & FLETCHER, Attorneys for Plaintiff.

Endorsed: Amended Answer. Filed June 9, 1932. Joel M. Dickey, Clerk. By Margaret L. Mullane, Chief Deputy.

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60 Reply.

Comes now Plaintiff above named and for his reply to the amended answer of defendant herein,

I.

Specifically denies each and every allegation thereof save and except as the same admits the allegations of plaintiff's complaint, or as herein otherwise qualified or admitted.

II.

Alleges that the agreement and trust settlement had by and between Edward Bruce Douglas, Ida M. Douglas and Minneapolis Trust Company, dated the 12th day of September, 1923, and the further transfer of securities of the 6th day of November, 1927, pursuant to said agreement, are as set forth in Exhibits I and II attached to Plaintiff's complaint and made a part thereof and not otherwise; alleges further that the agreement and trust settlement had by and between Edward Bruce Douglas, First Minneapolis Trust Company and Florence S. Douglas, dated the 16th day of March, 1928, is as set forth in Exhibit III attached to Plaintiff's complaint and made a part thereof and not otherwise; alleges that said exhibits I, II and III constitute the only agreements by and between said parties relative to the subject matter thereof.

III.

Alleges that on the 15th day of September, 1923, the bonds of matrimony, therefore existing between Ida M. Douglas and Edward Bruce Douglas, were duly dissolved and that on said date the District Court of Beltrami County in the
61 Fifteenth Judicial District of the State of Minnesota entered its judgment and decree, a copy of which, marked Exhibit VII is hereto attached and hereby made a part hereof.

IV.

Specifically denies that the securities transferred pursuant to the terms of said agreements were transferred in escrow, or that said agreements, or either of them, constitute escrow agreements, or that said agreements constitute anything other than trust agreements as alleged in said complaint of plaintiff herein.

Wherefore Plaintiff demands judgment as prayed in his complaint.

Dated July 27, 1932.

LELAND W. SCOTT,
1310 First National-Soo Line Bldg.,
Minneapolis, Minnesota.
Counsel for Plaintiff.

Of Counsel:
Junell, Oakley, Driscoll & Fletcher.

62 State of Minnesota,
County of Hennepin—ss:

William J. Stevenson being first duly sworn, says that he is the Vice President of First Minneapolis Trust Company,

the duly appointed attorney-in-fact of the plaintiff above named; that First Minneapolis Trust Company is acting in the matter referred to in the foregoing Reply pursuant to a Power of Attorney, which has not been revoked, given and executed by the Plaintiff; that the reason why this verification is not made by the plaintiff is that he is absent from the United States, wherein affiant resides; that affiant has read the foregoing reply and is familiar with the statements contained therein; that the facts therein stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

WILLIAM J. STEVENSON.

Subscribed and sworn to before me this 28th day of July, A. D. 1932.

L. H. ROUSE,

(Notarial Seal) Notary Public, Hennepin County, Minn.

My Commission expires March 15th, 1938.

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63 Exhibit VII.

Judgment and Decree.

District Court
15th Judicial District.

State of Minnesota,
County of Beltrami.

Ida M. Douglas, Plaintiff,
vs.
Edward Bruce Douglas, Defendant.

The above entitled action came regularly on to be heard before the Honorable C. W. Stanton, one of the judges of the above entitled Court in Chambers on the 15th day of September, 1923, and the Court having found that due service of the summons and complaint upon the defendant had been made on the 12th day of September, 1923, and that the defendant had thereafter duly made and served upon the plaintiff his answer to said complaint and after hearing the evidence adduced on behalf of the plaintiff, there being no evidence offered by the defendant, and being fully advised in the premises, and having duly made and filed its findings and order for judgment herein,

Now Pursuant to Said Order, and on motion of Lancaster, Simpson, Junell & Dorsey, attorneys for the plaintiff,

It Is Hereby Adjudged and Decreed that the bonds of matrimony heretofore existing between the plaintiff and defendant be and the same hereby are dissolved and the parties are hereby discharged from the obligations of their marriage contract and absolutely divorced from each other.

It Is Further Adjudged and Decreed that the defendant provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant and the neither party have any costs or disbursements herein.

Dated at Bemidji, Beltrami County, Minnesota, this 15th day of September, 1923.

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Clerk of the District Court, 15th Judicial District, Beltrami County, Minnesota.

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64 Due and personal service of the within Reply is hereby admitted this 29 day of July, 1932.

LEWIS L. DRILL,
T.
Attorney for Defendant.

Endorsed: Reply Filed July 29, 1932, Joel M. Dickey, Clerk, By Kathryn F. O'Connor, Deputy.

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65 Notice of Trial.

To Honorable L. L. Drill, United States Attorney and Attorney for Defendant:

Take Notice that the issues of law and fact in the above cause will be brought on for trial at the next General Term of the above entitled Court to be held in the Federal Building in the City of St. Paul on the first Tuesday in November, 1932.

Dated August 30th, 1932.

LELAND W. SCOTT,
1310 First National-Soo Line Bldg.,
Minneapolis, Minnesota,
Counsel for Plaintiff.

Of Counsel:
Junell, Oakley, Driscoll & Fletcher.

Service Admitted this 1st day of September, 1932.

LEWIS L. DRILL. G.

Endorsed: Notice of Trial Filed September 1st, 1932. Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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66 Stipulation Waiving Jury.

It Is Hereby Stipulated And Agreed by and between the parties to the above entitled action, through their respective counsel, that the issues in the case may, upon the trial thereof, be submitted to the Court for determination without a jury, a jury trial herein being hereby expressly waived.

Dated Oct. 27, 1932.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff.

LEWIS L. DRILL, G
United States Attorney and Attorney for Defendant.

Endorsed: Stipulation Waiving Jury. Filed October 28, 1932, Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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67 (Findings of Fact and Conclusions of Law of the District Court; Judgment, July 27, 1933.)

In the District Court of the United States in and for the District of Minnesota, Third Division.

Term Minutes

April Term, A. D. 1933.

July 27, 1933.

Thursday Morning,

Court opened pursuant to adjournment.

Present:—Honorable Matthew M. Joyce, Judge.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. At Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Findings of Fact and Conclusions of Law.

The above entitled cause came on to be heard before the undersigned, one of the Judges of the United States District Court, District of Minnesota, Third Division, during the regular term of said Court commencing on the first Tuesday in November, 1932, on December 12, 1932, in the Federal Building in the City of St. Paul, Ramsey County, Minnesota, the parties having agreed that said cause be tried to the Court and that a jury be waived, said agreement having been reduced to writing and filed with the Clerk of this Court. Mr. Leland W. Scott of Junell, Driscoll, Fletcher, Dorsey & Barker, counsel for the Plaintiff, appeared on behalf of the plaintiff and Honorable L. L. Drill, United States Attorney and Mr. M. W. Goldsworthy, Special Assistant United States Attorney, counsel for the Defendant, appeared on behalf of the defendant.

Upon the pleadings and the evidence offered and received upon said hearing and all the files and records herein the Court now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact.

1. Edward B. Douglas, the plaintiff, is and at all times hereinafter mentioned was a citizen of the United States and a resident of Deephaven, Hennepin County, in the State and District of Minnesota. Levi M. Willcuts, the defendant, was in the year 1921, at all times since has been and now is the duly appointed, qualified and acting Collector of Internal Revenue of the United States in and for the District of Minnesota.

2. This is a suit of a civil nature at common law, arising under the constitution and laws of the United States and particularly under the laws of the United States pertaining
68 to internal revenue. This action is to recover Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), with interest from March 30, 1931, and Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), with interest from June 4, 1931. Said sums constitute additional income taxes assessed by the Commissioner of Internal Revenue of the United States against and paid by plaintiff to defendant as Collector of Internal Revenue of the United States for the District of Minnesota for the calendar years 1927 and 1928, respectively. Plaintiff paid defendant said sums and the interest accrued thereon upon demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs upon him on March 30, and June 4,

1931, respectively. Plaintiff duly filed a claim for the refund of said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) with said Commissioner of Internal Revenue on April 8, 1931 Said Commissioner of Internal Revenue rejected Plaintiff's said claim on December 4, 1931. Plaintiff duly filed with said Commissioner of Internal Revenue a claim for the refund of said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) on June 15, 1931. Said claim was never formally rejected by said Commissioner of Internal Revenue and no part of the amounts paid defendant and claimed as aforesaid has ever been refunded to plaintiff. More than six months expired after filing said claim for Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) before this action was commenced. This action was commenced on December 28, 1931.

3. On September 12, 1923, Plaintiff, Ida M. Douglas and Minneapolis Trust Company executed that certain agreement dated September 12, 1923, a true and correct copy of which, marked Exhibit 1, is attached to plaintiff's complaint herein. Said agreement, for convenience, will hereinafter be referred to as the Ida M. Douglas Trust. On September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company as Trustee under said agreement the securities listed and described in Exhibit A attached to said agreement. On November 6, 1927, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company as trustee additional securities to be held by said Trust Company pursuant to the terms, conditions, provisions and covenants of said agreement dated September 12, 1923. The securities transferred on November 6, 1927, are described in the instrument, a true and correct copy of which, marked Exhibit 2, is attached to plaintiff's complaint. On November 10, 1923, plaintiff waived the right secured to him by Article 3 on Page 2 of the agreement of September 12, 1923, to designate and determine the securities for the investment of the trust funds referred to in said agreement and approved any and all investments made by Minneapolis Trust Company pursuant to said agreement. The net income of the Ida M.

69 Douglas Trust for the calendar year ended December 31, 1927, earned and collected upon the property transferred to Minneapolis Trust Company pursuant to the agreements dated September 12, 1923, and November 6, 1927, aforesaid, was Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52). Said net income consisted of the following items, to-wit: Dividends Nine Thousand Eight Hundred Fifty-seven and 66/100 Dollars ($9,857.66), other income Two Thousand Seven Hundred Fifty-two and

86/100 Dollars ($2,752.86). The net income of the Ida M. Douglas Trust for the calendar year ended December 31, 1928, earned and collected upon the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, was Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) and consisted of the following items, to-wit: Interest on tax-free covenant bonds, Nine Thousand Two Hundred Sixty and 96/100 Dollars ($9,260.96), tax paid at source on taxfree covenant bonds, One Hundred Eighty-five and 22/100 Dollars ($185.22), cash dividends, Six Thousand Four Hundred Forty-one and 96/100 Dollars ($6,441.96), other income, One Thousand Nine Hundred Fourteen and 47/100 Dollars ($1,914.47).

4. On March 16, 1928, plaintiff, First Minneapolis Trust Company and Florence S. Douglas executed an agreement dated March 16, 1928, a true and correct copy of which, marked Exhibit 3, is attached to plaintiff's complaint. For convenience said agreement will hereinafter be referred to as the Florence S. Douglas Trust. On March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company as Trustee under said agreement the securities listed and described in Exhibit A attached to said agreement. Plaintiff surrendered the power and right to change the beneficiary of policy No. 175,227 issued by Northwestern National Life Insurance Company on plaintiff's life and policy No. 465,994 issued by the Connecticut Mutual Life Insurance Company on plaintiff's life. The beneficiary of said policies of insurance is Florence S. Douglas and said policies are listed in Schedule B attached to said agreement. The net income of the Florence S. Douglas Trust for the calendar year ended December 31, 1928, received from the property transferred to First Minneapolis Trust Company pursuant to said agreement dated March 16, 1928, was Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), consisting of the following items, to-wit: interest on tax-free covenant bonds, One Hundred Twenty Dollars ($120.00) tax paid at source on tax-free covenant bonds, Two and 40/100 Dollars ($2.40), cash dividends, Seventeen Thousand Eighty-seven and No/100 Dollars ($17,087.00), other income Eleven Thousand Four Hundred Twelve and 95/100 Dollars ($11,412.95).

5. On March 15, 1928, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for
70 the calendar year ended December 31, 1927, showing therein as plaintiff's gross income for said calendar

year the sum of Fifty Thousand Fifty-nine and 31/100 Dollars ($50,059.31) as plaintiff's deductions the sum of Six Thousand Nine Hundred Seventy-eight and 18/100 Dollars ($6,978.18) and as plaintiff's net income the sum of Forty-three Thousand Seventy-one and 13/100 Dollars ($43,071.13). Plaintiff did not include in the gross income shown, as aforesaid, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid.

6. On March 15, 1929, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1928, showing therein gross income for said calendar year of Forty-two Thousand, Seven Hundred Forty-seven and 79/100 Dollars ($42,747.79), deductions of Three Thousand Four Hundred Eighteen and 20/100 Dollars ($3,418.20), and net income of Thirty-nine Thousand Three Hundred Twenty-nine and 59/100 Dollars ($39,329.59). Plaintiff did not include in the gross income aforesaid the net income of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and did not include in said gross income the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95) earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid.

7. Plaintiff's return for the calendar year ended December 31, 1928, was audited and reviewed by the Commissioner of Internal Revenue of the United States on October 16, 1930. Thereafter said Commissioner notified plaintiff that he had determined that plaintiff was required to include in the return of his income for the calendar year ended December 31, 1928, the net income earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and One Thousand Forty-six and 98/100 Dollars ($1,046.98) of the net income earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the instrument dated March 16, 1928, aforesaid. Said sum of One Thousand Forty-six and 78/100 Dollars ($1,046.78) is that portion

of the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), aforesaid,
71 applied by First Minneapolis Trust Company toward the payment of premiums on the insurance policies aforesaid. Said One Thousand Forty-six and 98/100 Dollars ($1,046.98) consists, according to the determination of said Commissioner, of interest on tax-free covenant bonds in the amount of Four and 39/100 Dollars ($4.39), other income in the amount of Four Hundred Seventeen and 51/100 Dollars ($417.51), and dividends in the amount of Six Hundred twenty-five and 08/100 Dollars ($625.08). Said Commissioner included said sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) and said sum of One Thousand Forty-six and 98/100 Dollars ($1,046.98) in plaintiff's gross income for the calendar year ended December 31, 1928. Said Commissioner thereupon determined that the inclusion of said sums in plaintiff's gross income for said calendar year increased plaintiff's income tax liability for said calendar year over that reported in plaintiff's return in the amount of Two Thousand Five Hundred Eighty-one and 74/100 Dollars ($2,581.74). Said additional tax, together with interest thereon in the amount of Two Hundred Fifty-nine and 87/100 Dollars ($259.87) was assessed against Plaintiff in March, 1931. On March 28, 1931, defendant demanded of plaintiff that he pay Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant the said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) on March 30, 1931.

8. Plaintiff's return for the calendar year ended December 31, 1927, was audited and reviewed by the Commissioner of Internal Revenue of the United States on March 5, 1931. Said Commissioner thereafter notified plaintiff that he had determined that plaintiff was required to include in the return of income for the calendar year ended December 31, 1927, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid. Said Commissioner included said sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) in plaintiff's gross income for said calendar year ended December 31, 1927, and determined

that the inclusion of said sum in plaintiff's gross income increased plaintiff's income tax liability for the calendar year ended December 31, 1927, over the tax liability disclosed in Plaintiff's return for said year in the amount of One Thousand Seven Hundred Fifty-eight and 38/100 Dollars ($1,758.38). Said additional tax, with interest thereon amounting to Three Hundred Thirty-six and 40/100 Dollars ($336.40), was assessed against Plaintiff in May, 1931. On June 3, 1931, defendant demanded of plaintiff that he pay Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), on June 4, 1931.

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9. On April 8, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid defendant on March 30, 1931, as aforesaid, a true and correct copy of which claim, marked Exhibit 4, is attached to Plaintiff's complaint. On December 4, 1931, said Commissioner rejected plaintiff's said claim in full by letter dated December 4, 1931, a true and correct copy of which, marked Exhibit 5, is attached to plaintiff's complaint. On June 15, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid by him to defendant on June 4, 1931. A true and correct copy of said claim, marked Exhibit 6, is attached to plaintiff's complaint. At the time of the commencement of this action more than six months had expired since the date of filing said claim and plaintiff had not been notified that said Commissioner of Internal Revenue had rendered his decision thereon and said Commissioner had not rendered his decision thereon at the time of the commencement of this action. No part of the additional tax and interest thereon paid by plaintiff to defendant on June 4, 1931, has ever been refunded to plaintiff.

10. On September 15, 1923, the bonds of matrimony theretofore existing between Ida M. Douglas and plaintiff were duly dissolved and on said date the District Court of Beltrami County in the Fifteenth Judicial District of the State of Minnesota entered its judgment and decree dissolving the bonds of matrimony theretofore existing between said parties and discharging said parties from the obligations of their marriage contract and absolutely divorcing each from the other. Said Court further adjudged and decreed that Ida M. Douglas have the provision made in the

agreement dated September 12, 1923, aforesaid, in lieu of all other alimony or interest in the property or estate of the defendant. A true and correct copy of said judgment and decree, marked Exhibit 7, is attached to plaintiff's reply herein.

73 Conclusions of Law.

1. That the agreement of September 12, 1923, as amended by the agreement of November 6, 1927, and the agreement of March 16, 1928, constitute valid, binding and irrevocable trusts within the meaning of the Revenue Acts of 1926 and 1928.

2. That the transfers by plaintiff on September 12, 1923, November 6, 1927, and March 6, 1928, were consummated on said dates and effective to divest plaintiff of all control over the property transferred and the income derived therefrom during the calendar years ended December 31, 1927, and 1928, and that during said years plaintiff did not receive and was not entitled to and did not enjoy the income aforesaid of said trusts or economic benefits of the property so transferred.

3. That during the calendar year ended December 31, 1927, Ida M. Douglas was entitled to and did receive the sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income of the Ida M. Douglas Trust for said year.

4. That during the calendar year ended December 31, 1928, Ida M. Douglas was entitled to and did receive the sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income of the Ida M. Douglas Trust for said year, and Florence S. Douglas was entitled to and did receive the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income of the Florence S. Douglas Trust for said year, save and except One Thousand Forty-six and 98/100 Dollars ($1,046.98), which was paid by First Minneapolis Trust Company to and was received by the insurers of the life of plaintiff as premiums on the policies of insurance referred to in the foregoing Findings of Fact.

5. That plaintiff is liable for the income tax which is due on the sum of One Thousand Forty-six and 98/100 Dollars ($1,046.98) received by the Florence S. Douglas Trust and (as noted in paragraph 7 of the findings of fact above) applied by First Minneapolis Trust Company toward the payment of premiums on insurance on plaintiff's life.

6. That during the calendar years ended December 31, 1927, and 1928 plaintiff did not earn the income realized on the property transferred, as aforesaid.

7. That the following sums, to-wit: Two Thousand Eight Hundred Forty-one and 61/100 Dollars
74 ($2,841.61), paid by plaintiff to defendant on March 30, 1931, and Two Thousand Ninety-four and 78/100 Dollars ($2094.78), paid by plaintiff to defendant on June 4, 1931, constitute erroneous, illegal and excessive collections of income taxes for the calendar years ended December 31, 1928, and 1927, respectively.

8. That plaintiff is entitled to have and recover of defendant the sum of Two Thousand, Five Hundred Fifty-four and 3/100 Dollars ($2,554.03) with interest thereon, according to law, from the 30th day of March, 1931, and the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), together with interest thereon, according to law, from June 4, 1931, together with his costs and disbursements herein.

Dated 7/27/33.

By the Court,

MATTHEW M. JOYCE, Judge.

Order.

Pursuant to the Findings of Fact and Conclusions of Law this day entered herein it is, by the undersigned, one of the Judges of the United States District Court, District of Minnesota, Third Division,

Ordered, Adjudged and Decreed that plaintiff, Edward B. Douglas, recover of defendant, Levi M. Willcuts, as Collector of Internal Revenue, for the District of Minnesota, the sum of Two Thousand, Five Hundred Fifty-four and 3/100 Dollars ($2,554.03) paid by plaintiff to defendant on March 30, 1931, and the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) paid by plaintiff to defendant on June 4, 1931, together with interest on each sum from the date of payment thereof as required by law, together with plaintiff's costs herein.

It Is Further Ordered, Adjudged and Decreed, and the Court hereby so certifies, that there was probable and reasonable cause for the act of the defendant, the Collector of Internal Revenue, in demanding and collecting from the plain-

tiff the income tax aforesaid for the refund of which this judgment is entered.

Dated 7/27/33.

By the Court,

MATTHEW M. JOYCE, Judge.

75 It Is Further Ordered that a stay of forty-two days from this date of all proceedings excepting the entry of judgment and judgment for costs be and the same hereby is granted said defendant within which time it may make a motion for a new trial or take such steps in the premises as it may be advised.

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76 Notice of Appeal.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

To Junell, Driscoll, Fletcher, Dorsey & Barker, First National Soo-Line Building, Minneapolis, Minnesota, Attorneys for Plaintiff:

You Will Please Take Notice That the above-named defendant Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, considering himself aggrieved by the judgment of the Court made and entered on the 27th day of July, A. D. 1933, does hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from said judgment.

This appeal is taken upon questions of fact and of law and is based upon the records, files, assignments of error, and other papers filed herein.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

GEO. F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant,
221 Post Office Building,
St. Paul, Minnesota.

Service of the foregoing Notice of Appeal, by copy thereof, hereby is admitted at Minneapolis, Minnesota, this 25th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

77 Endorsed: Notice of Appeal. Filed October 25, 1933. Margaret L. Mullane, Clerk.

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78 Order Allowing Appeal.

The above named defendant duly having presented his Petition for Appeal and duly having served and filed his Notice of Appeal and Assignments of Error, and no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, the Court being satisfied that this appeal is taken by direction of the Attorney General of the United States, the prayer of said defendant hereby is granted and accordingly,

It Is Ordered that the appeal of said defendant be and the same hereby is allowed.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

MATTHEW M. JOYCE,
Judge of the United States District
Court for the District of Minnesota.

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79 Petition for Appeal.

The above named defendant, considering himself aggrieved by the judgment entered in the above entitled cause on the 27th day of July, A. D. 1933, and desiring to appeal from said judgment in said cause to the United States Circuit Court of Appeals for the Eighth Circuit, presents herewith his Notice of Appeal and Assignments of Error, no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, this appeal being taken by the direction of the Attorney General of the United States; and defendant prays for an order of this Court allowing said appeal and for a Citation directed to the above named plaintiff requiring said plaintiff to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, within forty (40)

days from and after the date of said Citation, pursuant to said appeal.

Dated at St. Paul, Minnesota, this 25" day of October, A. D. 1933.

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota,
By Geo. F. Sullivan, United States Attorney for the District of Minnesota, and Attorney for Defendant.

Endorsed: Petition for Appeal and Order Allowing Appeal. Filed October 25, 1933. Margaret L. Mullane, Clerk.

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80 Assignments of Error.

Comes now the above-named defendant Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, by his attorney, George F. Sullivan, United States Attorney for the District of Minnesota, and in the above entitled cause files the following Assignments of Error upon this his appeal from the judgment entered by this Honorable Court on the 27th day of July, A. D. 1933:

I.

The Court erred in denying defendant's motion for judgment in his favor at the close of all the evidence, on the ground that there was no substantial or sufficient evidence to sustain any other conclusion than that defendant should have judgment.

II.

The Court erred in granting judgment in favor of the plaintiff and against the defendant in the aggregate sum of Forty-Six Hundred Forty-Eight and 81/100 ($4648.81) Dollars, with interest thereon from the respective dates of payments thereof by plaintiff to defendant, in that there is no substantial or sufficient evidence to sustain and justify such judgment.

Wherefore, Defendant prays that the judgment entered in favor of plaintiff be in all respects reversed, set aside
81 and vacated, and that the above entitled cause be remanded for such proceedings in the trial court as may be consistent with justice.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant,
221 Post Office Building,
St. Paul, Minnesota.

Service of the foregoing Assignments of Error, by copy thereof, hereby is admitted at Minneapolis, Minnesota, this 25th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff.
By Leland W. Scott.

Endorsed: Assignments of Error, Filed October 25, 1933, Margaret L. Mullane, Clerk.

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82 Bill of Exceptions.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

The above entitled matter came on for trial in the United States District Court for the District of Minnesota at the city of St. Paul, Minnesota, on December 12, 1932, before the Honorable Matthew M. Joyce, Judge of the Court aforesaid, above named parties having stipulated and agreed in writing to trial thereof without the intervention of a jury, the plaintiff being represented by Leland W. Scott, of the law firm of Junell, Driscoll, Fletcher, Dorsey and Barker, of Minneapolis, Minnesota, and the defendant being represented by the United States Attorney for the District of Minnesota of St. Paul, Minnesota, the following proceedings then and there being had:

The following facts relating to plaintiff's first cause of action were admitted by the parties to be true, actual proof thereof being waived, to-wit:

1. That plaintiff is and at all the times material to the issues herein was a citizen of the United States and a resident of Deephaven, Hennepin County, Minnesota;

2. That defendant in the year 1921 and continuously thereafter to the date of the trial hereof was the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the District of Minnesota;

3. That this cause is a suit of civil nature at common law, arising under the Constitution and laws of the United States and particularly under the laws of the United States pertaining to Internal Revenue;

83 4. That on September 12, 1923, plaintiff, Ida M. Douglas, and Minneapolis Trust Company signed, sealed and delivered that certain agreement, in triplicate, dated September 12, 1923, a true and correct copy of which, marked Exhibit I, is attached to plaintiff's complaint herein.

5. That in accordance with and under the provisions of said agreement and on September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee under said agreement, the securities listed and described in Exhibit A attached to said agreement, which securities consisted of various municipal bonds aggregating $55,200 par value, various industrial and public utility bonds aggregating $42,000 par value, various farm mortgages aggregating $28,000 par value, and various corporate stocks (capital and preferred) aggregating $206,298 par value.

6. That on November 10, 1923, at New York, N. Y., plaintiff wrote and mailed the following letter, which was duly received by the addressee thereof:

"Minneapolis Trust Company, Trustee under Agreement with Edward Bruce Douglas, dated September 12, 1923, Minneapolis, Minnesota.

Gentlemen:

Article 3 on page 2 of this agreement entered into between myself and your company for the benefit of Ida M. Douglas provides that I shall from time to time designate and determine in what securities the trust fund shall be invested, subject only to your approval.

In order to facilitate matters with reference to the investment I hereby waive my right to designate and determine the securities for the investment of said trust funds in the above

referred to agreement and approve any and all investments made by you for said trust.

Yours very truly,

EDWARD B. DOUGLAS."

7. That in accordance with and under the provisions of the agreement of September 12, 1923, aforesaid, plaintiff, on November 6, 1927, conveyed, assigned, transferred and set over to Minneapolis Trust Company, as trustee under said agreement, additional securities to be held by said Trust Company pursuant to the terms, conditions, provisions, and covenants of said agreement, which additional securities consisted of additional municipal, public utility, and industrial bonds aggregating $128,000 par value, which were
84 transferred as aforesaid pursuant to and described in that certain Supplemental Agreement, a true and correct copy of which, marked Exhibit II, is attached to plaintiff's complaint herein.

8. That the net income for the calendar year ended December 31, 1928, earned by the property transferred to Minneapolis Trust Company pursuant to the agreements dated September 12, 1923, and November 6, 1927, aforesaid, and collected by Minneapolis Trust Company, as trustee, and received during said year by Ida M. Douglas as beneficiary of and under the provisions of said agreement of September 12, 1923, was $17,617.39, which was comprised of:

Interest on tax-free covenant bonds	$9,260.96
Tax paid at source on tax-free covenant bonds	185.22
Cash dividends	6,441.96
Other income	1,914.47

9. That on September 15, 1923, the District Court of Beltrami County, Minnesota, duly entered its judgment and decree absolutely dissolving the bonds of matrimony theretofore existing between plaintiff and the said Ida M. Douglas and forever discharging them from the obligations of their marriage contract, and providing that plaintiff create a trust fund as set out in that certain agreement described in paragraph 4 hereof, and that the said Ida M. Douglas have the provision therein made in lieu of all other alimony or interest in the property or estate of plaintiff.

10. That on March 16, 1928, plaintiff, First Minneapolis Trust Company, and Florence S. Douglas signed, sealed and delivered that certain agreement dated March 16, 1928, a true and correct copy of which, marked Exhibit III, is attached to plaintiff's complaint herein.

11. That in accordance with and under the provisions of said agreement of March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company, as trustee under said agreement, the securities listed and described in Exhibit A attached to said agreement, which securities consisted of various mortgages Aggregating $24,000 par value, municipal and public bonds aggregating $152,000 par value, corporate stocks (common, capital, and preferred) aggregating $140,745 par value, and cer-
85 tain various policies of insurance aggregating $67,000 par value. Plaintiff surrendered the power and right to change the beneficiary of policy No. 175,227, issued by Northwestern National Life Insurance Company on plaintiff's life, and policy No. 465,994, issued by the Connecticut Mutual Life Insurance Company on plaintiff's life. The beneficiary on said policies of insurance is Florence S. Douglas and said policies are listed in Schedule B attached to said agreement.

12. That the net income for the calendar year ended December 31, 1928, earned by the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid, and collected by First Minneapolis Trust Company, as trustee, and received during said year by Florence S. Douglas as beneficiary of and under the provisions of said agreement of March 16, 1928, was $28,619.95, which was comprised of:

Interest on tax-free covenant bonds.....$	120.00
Tax paid at source on tax-free covenant bonds	2.40
Cash dividends	17,087.00
Other income	11,412.95

13. That Florence S. Douglas made and filed an income tax return for the calendar year 1928 reporting her net income in said year as $28,619.95, upon which she paid a federal income tax of $1,035.72.

14. On March 15, 1929, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1928, showing therein gross income for said calendar year of Forty-two Thousand, Seven Hundred Forty-seven and 79/100 Dollars ($42,747.79), deductions of Three Thousand Four Hundred Eighteen and 20/100 Dollars ($3,418.20), and net income of Thirty-nine Thousand Three Hundred Twenty-nine and 59/100 Dollars ($39,329.59). Plaintiff did not include in the gross income aforesaid the net income of Seventeen Thousand Six Hun-

dred Seventeen and 39/100 Dollars ($17,617.39) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and did not include in said gross income the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95) earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid, being the respective net incomes derived and received during the calendar year
86 1928 by Ida M. Douglas and Florence S. Douglas as respective beneficiaries of and under the provisions of the respective agreements aforesaid.

15. That plaintiff's said income tax return for the calendar year 1928 was audited and reviewed by the Commissioner of Internal Revenue of the United States on October 16, 1930.

That pursuant thereto said Commissioner notified plaintiff that he (said Commissioner) had determined that plaintiff was required to include in plaintiff's return aforesaid as gross income the net income (mentioned in paragraph 8 hereof) derived and received during said calendar year 1928 by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4, 5 and 7 hereof and that plaintiff was required also to include in plaintiff's return aforesaid as gross income the sum of $1,046.98 representing a portion of the net income earned and collected in the calendar year 1928 from the stocks, bonds, mortgages and other property deposited with the First Minneapolis Trust Company as aforesaid, in accordance with and under the provisions of the agreement described in paragraph 10 hereof, which sum of $1,046.98 consists, according to the determination of said Commissioner, of interest on tax-free covenant bonds in the amount of $4.39, other income in the amount of $417.51, and dividends in the amount of $625.08, and represents the portion of said net income applied in the calendar year 1928 by said Trust Company to the payment of premiums on the insurance policies mentioned in paragraph 11 hereof and disbursed from said income earned and collected as aforesaid.

That pursuant to such determination, the Commissioner of Internal Revenue of the United States included said sums, to-wit: the sum of $17,617.39 and the sum of $1,046.98 in plaintiff's gross income for the calendar year 1928, recomputed plaintiff's tax liability for said year accordingly, and determined that plaintiff was liable for an additional tax on said calendar year in the amount of $2,581.74, which amount,

together with interest thereon in the sum of $259.87, was assessed by said Commissioner against plaintiff in March, 1931.

87 That on March 28, 1931, defendant demanded of plaintiff that plaintiff pay the sum of $2,841.61, being the aggregate amount of the additional tax with interest as aforesaid, and that pursuant to such demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid defendant the sum of $2,841.61 on March 30, 1931.

That on April 8, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid defendant on March 30, 1931, as aforesaid, a true and correct copy of which claim, marked Exhibit IV, is attached to plaintiff's complaint. On December 4, 1931, said Commissioner rejected plaintiff's said claim in full by letter dated December 4, 1931, a true and correct copy of which, marked Exhibit V, is attached to plaintiff's complaint.

* * * * * *

The following facts, relating to plaintiff's second cause of action, were admitted by the parties to be true, actual proof thereof being waived, to-wit:

16. The facts set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, and 9 hereof.

17. That the net income for the calendar year ended December 31, 1927, earned by the property transferred to Minneapolis Trust Company pursuant to the agreement dated September 12, 1923, aforesaid, and collected by Minneapolis Trust Company, as trustee, and received during said year by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4, 5, 6, and 7 hereof was $12,610.52, which was comprised of:

Cash dividends in the sum of $9,857.66
And other income amounting to $2,752.86

18. On March 15, 1928, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1927, showing therein as plaintiff's gross income for said calendar year the sum of Fifty Thousand Fifty-nine and 31/100 Dollars ($50,059.31) as plaintiff's deductions the sum of Six Thousand Nine Hundred Seventy-eight and 18/100 Dollars ($6,978.18)

and as plaintiff's net income the sum of Forty-three
88 Thousand Seventy-one and 13/100 Dollars ($43,-071.13). Plaintiff did not include in the gross income shown, as aforesaid, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, being the net income derived and received by Ida M. Douglas, as aforesaid.

19. That plaintiff's said income tax return for the calendar year 1927 was audited and reviewed on March 5, 1931, by the Commissioner of Internal Revenue of the United States; that pursuant thereto said Commissioner notified plaintiff that he, said Commissioner, had determined that plaintiff was required to include in plaintiff's return aforesaid as gross income the net income (mentioned in paragraph 17 hereof) derived and received during said calendar year 1927 by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4 to 7 hereof inclusive;

That pursuant to such determination, the Commissioner of Internal Revenue of the United States included said sum, to-wit: $12,610.52 in plaintiff's gross income for said calendar year 1927, recomputed plaintiff's tax liability for said year accordingly, and determined that plaintiff was liable for an additional tax in said calendar year in the amount of $1,758.38, which amount, together with interest thereon in the sum of $336.40, was assessed by said Commissioner against plaintiff in May, 1931.

That on June 3, 1931, defendant demanded of plaintiff that plaintiff pay the sum of $2,094.78, being the aggregate amount of the additional tax, with interest, as aforesaid; and that pursuant to such demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of $2,-094.78 on June 4, 1931.

That on June 15, 1931, plaintiff filed with the Commissioner of Internal Revenue of the United States his claim for the refund of the sum so paid by plaintiff to defendant on June 4, 1931, a true and correct copy of said claim, marked Exhibit VI, is attached to plaintiff's complaint. At the time of the commencement of the above entitled action more than six (6) months had expired since the date of filing said claim and plaintiff had not been notified that said Com-

missioner of Internal Revenue had rendered his de-
89 cision thereon and said Commissioner had not rendered his decision thereon at the time of the commencement of the above entitled action. No part of the additional tax and interest thereon, paid by plaintiff to defendant on June 4, 1931, has ever been refunded to plaintiff.

20. That the agreements referred to in paragraphs 4, 6, 7 and 10 constitute the only agreements by and between the parties thereto relative to the subject matter thereof.

* * * * * *

The foregoing facts having been admitted as aforesaid, the plaintiff rested and the defendant rested, whereupon plaintiff moved for judgment in his favor and against defendant on the ground and for the reason that there is no substantial evidence or facts in the case to sustain any other conclusion, which motion was taken under advisement.

Thereupon defendant moved for judgment in his favor and against the plaintiff on the ground and for the reason that there is no substantial evidence or facts in the case to sustain any other conclusion, which motion was denied and an exception to such denial taken and allowed.

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90 Stipulation Approving Bill of Exceptions.

It is stipulated and agreed hereby that the foregoing transcript, consisting of 8 typewritten pages, may be accepted, signed, settled and allowed as the Bill of Exceptions or settled case in the above entitled matter; that the same includes all of the evidence offered and received at the trial, save and except the exhibits referred to in and forming a part of Plaintiff's complaint in the above entitled cause; that said exhibits may be considered by the Circuit Court of Appeals as fully as though the same were completely set out in this Bill of Exceptions; that this Bill of Exceptions shows all the proceedings, objections, rulings and exceptions made, taken, and granted on the trial of said cause and that the same may be settled by the Court as the Bill of Exceptions and case.

Dated this 8" day of Jan., 1934.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER
Attorneys for Plaintiff.
By Leland W. Scott.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota and Attorney for Defendant.
By Geo. A. Heisey, his assistant.

---

91 Order Approving Bill of Exceptions.

Upon the foregoing Stipulation, the foregoing transcript consisting of 8 typewritten pages hereby is settled and allowed as a full, true and complete transcript of all the evidence introduced at the trial of the above entitled cause, and includes all the objections, rulings, exceptions and proceedings had and taken in the trial of said cause, and the same hereby is duly allowed as the Bill of Exceptions and settled case.

Dated at St. Paul, Minnesota, 8th day of January, 1934.

MATTHEW M. JOYCE,
Judge of the U. S. District Court
for the District of Minnesota.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk. By Joseph T. Lynch, Deputy.

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92 Citation on Appeal.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

The United States of America,

To the Above Named Plaintiff, Edward B. Douglas, and to his Attorneys, Junell, Driscoll, Fletcher, Dorsey & Barker, First National Soo Line Building, Minneapolis, Minnesota:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit in the City of St. Louis, in the State of Missouri, forty (40) days from and after the date of this Citation, pursuant to an appeal taken and filed in the office of the Clerk of the United States District Court for the District

of Minnesota, notice of said appeal having been served upon you in the above entitled cause, wherein Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, above named, is the appellant, and you are the appellee, to show cause, if any there be, why the judgment rendered against said appellant in said cause should not be reversed and why speedy justice should not be done to said appellant in that behalf.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

MATTHEW M. JOYCE,
Judge of the United States District
Court for the District of Minnesota.

Service of the foregoing Citation by copy thereof is hereby admitted at Minneapolis, Minnesota, this 28th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

Endorsed: Filed in U. S. District Court on Oct. 31, 1933.

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94 (Order Extending Time to File Transcript.)

Whereas, in the above-entitled cause on appeal, a citation duly was issued by this court on October 25, 1933, returnable forty days thereafter, and

Whereas, above-named defendant, by his attorney, George F. Sullivan, United States Attorney for the District of Minnesota, has applied for further enlargement of the time stated in said citation, now therefore, for good cause shown,

It Is Hereby Ordered that said citation be and the same hereby is enlarged further and the time for the appearance of the above-named plaintiff and his attorney of record, as required by, and for the purposes stated in said original citation, in the United States Circuit Court of Appeals for the Eighth Circuit, hereby is extended and enlarged to and including January 3, 1934.

Dated at St. Paul, Minnesota, this first day of December, 1933.

By the Court:

MATTHEW M. JOYCE,
Judge.

Service of the foregoing Order, by copy thereof, hereby is admitted this 8th day of December, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland S. Duxbury.

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95 Return on Service of Writ.

United States of America,
District of Minnesota—ss:

I hereby certify and return that I served the annexed Order Enlarging Citation on the therein-named Junell, Driscoll, Fletcher, Dorsey & Barker, Attorneys for Plaintiff by handing to and leaving a true and correct copy thereof with Leland S. Duxbury, member of the above named firm of attorneys at Minneapolis in said District on the 8th day of December, A. D. 1933.

BERNARD ANDERSON,
U. S. Marshal,
By T. J. Beatty, Deputy.

Endorsed: Order Enlarging Citation. Filed December 8th, 1933, Margaret L. Mullane, Clerk.

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96 (Order Further Extending Time to File Transcript.)

Whereas, In the above entitled cause on appeal a Citation heretofore issued, the forty day period specified therein being about to expire and the Bill of Exceptions in said cause not having been settled and allowed as yet, and defendant by his attorney of record having applied for an enlargement of said Citation—

Now, Therefore, It Is Ordered That the Citation heretofore issued in said cause be and the same hereby is enlarged to and including February 12, 1934, and that the time for the appearance of above named plaintiff and his attorneys of record and for filing the transcript of the record in said

cause on appeal, as required by and for the purposes stated in said original Citation, in the United States Circuit Court of Appeals for the Eighth Circuit, be and the same hereby is extended to and including said 12th day of February, 1934.

Dated at St. Paul, Minnesota, this 29th day of December, 1933.

By the Court:

MATTHEW M. JOYCE,
Judge.

Due and personal service of the foregoing Order, by copy thereof, hereby is admitted this 30 day of Dec. A. D., 1933 at Minneapolis, Minnesota.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

Endorsed: Filed December 30, 1933. Margaret L. Mullane, Clerk.

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97 Praecipe for Transcript.

It is stipulated and agreed hereby, between the undersigned respective counsel for the above named parties, plaintiff and defendant, that the Clerk of the United States District Court for the District of Minnesota be and she hereby is directed to prepare and certify a transcript of the record in the above entitled case for the use of, and to make a return to, the United States Circuit Court of Appeals for the Eighth Circuit by including therein the following:

1. Summons.
2. Complaint.
3. Original answer.
4. Amended answer.
5. All stipulations extending time within which to answer Complaint.
6. Reply.
7. Notice of Trial
8. Stipulation waiving jury.

9. Findings of Fact, Conclusions of Law and Order for Judgment.

10. Judgment.

98 11. Bill of Exceptions, together with Stipulation and Order allowing same.

12. Notice of Appeal.

13. Assignments of Error.

14. Petition for Appeal.

15. Order allowing Appeal.

16. Citation on Appeal.

17. All Orders enlarging Citation.

18. Election to file typewritten transcript to be printed under the supervision of the Clerk.

19. This Praecipe for Transcript.

20. Admissions and certificates of service endorsed on above mentioned papers.

Dated at Saint Paul, Minnesota, this 8" day of Jan. 1934.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant.
By Geo. A. Heisey, His Assistant.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk, By Joseph T. Lynch, Deputy.

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99 Election as to Printing of Record.

To the Clerk of the United States District Court for the District of Minnesota:

In pursuance of the Praecipe therefor, filed in the above entitled cause, you hereby are respectfully requested to prepare the transcript in typewritten form on the appeal by the above named defendant, taken from the judgment entered on the 27th day of July, 1933, in said cause, in order that said transcript may be filed in the office of the Clerk of the United

States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri:

And said defendant hereby elects to have the record in said cause on appeal as aforesaid, printed under the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated at Saint Paul, Minnesota, this 30" day of December, 1933.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant.
By Geo. A. Heisey,
His Assistant.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk, By Joseph T. Lynch, Deputy.

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100 (Clerk's Certificate to Transcript.)

United States District Court, District of Minnesota, Third Division.

I, Margaret L. Mullane, Clerk of said District Court do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 100 pages numbered consecutively from 1 to 100, inclusive, is a true and complete transcript of the records, pleadings, orders and final judgment in the case of Edward B. Douglas, Plaintiff, vs. Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, defendant, in accordance with the praecipe for such transcript, a copy of which is included in said transcript; and I do further certify and return that I have annexed to said transcript and included within said paging the original Citation, together with the admission of service thereof.

In Witness Whereof, I have hereunto set my hand as the Clerk aforesaid, and affixed the seal of said Court, at St. Paul, in said District, this 1st day of February, 1934.

Seal
U. S. Dist. Court
Third Div.
Dist. of Minnesota

MARGARET L. MULLANE,
Clerk.

Filed Feb. 3, 1934, E. E. Koch, Clerk.

[fol. 82] Appearances of counsel omitted in printing.

[fol. 83] Order of Submission, June 1, 1934, omitted in printing.

[fol. 84] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, MAY TERM, A. D. 1934

No. 9938

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota, Appellant,

vs.

EDWARD B. DOUGLAS, Appellee

Appeal from the District Court of the United States for the District of Mimesota

Mr. Milford S. Zimmerman, Special Assistant to the Attorney General (Mr. Frank J. Wideman, Assistant Attorney General, and Mr. Sewall Key, Special Assistant to the Attorney General, were with him on the brief), for appellant.

Mr. Leland W. Scott (Messrs. Junell, Driscoll, Fletcher, Dorsey and Barker were with him on the brief), for appellee.

Before Stone, Circuit Judge, and Bell, District Judge

OPINION—September 10, 1934

STONE, Circuit Judge, delivered the opinion of the court:

This is an appeal by the collector from a judgment according refund of income taxes.

On the 15th of September, 1923, a decree of divorce was entered in favor of Ida M. Douglas, wife of Edward Bruce [fol. 85] Douglas, appellee. Three days prior thereto, the above parties and the Minneapolis Trust Company entered into a trust agreement whereby appellee deposited certain securities of par or estimated value of $300,000 with the

trust company as trustee and further provided for the delivery to the trustee, on November 6, 1927, of further property to be received from his father's estate. The trustee was given full power of control, reinvestment and change of the securities in the trust fund "subject, however, to the consent and approval" of appellee and the further right in appellee to designate and determine investments subject to the approval of the trustee (acting in that respect for the wife as to the reasonable safety and adequate income producing nature of the securities). The declared purposes of the trust were to pay to the wife during her life, from the income of the trust estate, $15,000 annually from September 1, 1923, to November 6, 1927, and thereafter $21,000 annually, with a provision that in case the net income from the trust fund should not prove sufficient to make any of the above payments the husband, upon request, should make good such deficiency or, in default thereof, the deficiency should be made up from the principal of the trust fund. In case the net income from the trust fund should exceed the annual payments required the trustee should pay such excess to the husband or his successors, subject to the right of the trustee to reserve therefrom reasonable amounts to fairly insure the prompt meeting of future payments to the wife. "Net income" is defined as meaning income from the trust fund exclusive of profits from sale of items in the fund and exclusive of stock dividends (these exceptions to become a part of the principal of the trust fund) and less income tax paid by the trustee. Power to change the trustee is reserved to the appellee and his successors. The trust is to terminate at the death of the wife and the principal of the trust fund then to revert to appellee or his successors. Another provision is as follows:

"It is expressly agreed by and between the parties hereto, and more especially by the party of the second part, that the provisions herein made for her are in lieu of, and in full settlement of alimony, and of any and all dower rights or statutory interests in the estate of the party of the first part, and in lieu of any and all claims for separate maintenance and allowance for her support."

[fol. 86] Besides dissolving the marriage, the decree of divorce provides:

"It Is Further Adjudged and Decreed that the defendant provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant and that neither party have any costs or disbursements herein."

In his individual income tax returns for the years 1927 and 1928, appellee omitted income realized by the trust estate and paid to the wife thereunder. A redetermination by the Commissioner resulted in the inclusion of this item in each of those years and the tax thereon was paid under protest. Thereafter, proper demand for refund was made and this action seasonably brought. With a small reduction in the tax for 1928, which reduction is not in question here, the court adjudged recovery of the tax paid on account of the inclusion of this item in the above two years. As the matter comes here, the only thing involved is the propriety of including such income from the trust estate in the personal income taxable to appellee.

One contention of the Commissioner is that the entire income from this trust is taxable to the creator thereof because, under its terms, the trust estate is to revert to the creator after it has served the purpose of its creation and also the creator is entitled to the surplus annual income of the trust above the required payments to the wife. We do not see why either or both of these provisions should, of themselves, have such result; however, they may bear upon the main contention in its appeal, hereafter to be examined.

The bald fact that after an irrevocable trust has served its purpose the trust estate is to revert to the creator does not, without more, make the income during the trust period that of the creator for tax or any purposes. The statute is aimed at taxation of income. It expressly recognizes trust estates as taxable entities and specifically points out the trustee or the beneficiary as the taxpayer for incomes from such estates. If the creator of the trust is beneficially entirely separated from that income under all allowable tax considerations, he is as though a total stranger thereto. The duration of the trust and the dis- [fol. 87] position of the corpus at the termination of the

trust are, of themselves alone, usually quite immaterial. Also, it is unimportant, of itself, that the surplus income of a trust goes to the creator. If a well disposed person desiring to assure the proper education of the child of a friend by providing an annual fund therefor of $1,000 should create an irrevocable trust of $25,000 with provisions that at the end of ten years the trust should terminate and the corpus return to him and that during the trust any annual income above $1,000 should be paid by the trustee to him, it would require an inescapably clear expression of Congressional intent to believe that a statute meant to tax, as income to the creator during the trust, anything beyond the actually accruing annual surplus income and, if such construction were compelled, the validity of such an imposition would be widely open to question.

The main and more serious contention of the Commissioner is that the creator of this trust is taxable for the income therefrom because that income is "used to pay a legal and adjudicated obligation which he owed, and in so doing conferred the benefit upon him." The argument is that the trust was created to provide an income in lieu of alimony or other interest in his estate and was, by the court granting the divorce, specifically decreed in lieu thereof. Therefore, it is said to follow that since this trust was created to meet a personal and legal obligation he was bound to fulfill and since the income therefrom was devoted to that purpose, it was so used for his benefit as to constitute it his income.

In efforts to avoid income or estate taxes, various devices have come to the courts. From decisions thereon has evolved the general rule that where the creator receives "the substance of enjoyment" (Burnet v. Wells, 289 U. S. 670, 677) of the income it is regarded as his for taxation purposes. Instances where such enjoyment has been held to exist are contracts for assignments of income (Lucas v. Earl, 281 U. S. 111), assignments of future income (Burnet v. Leininger, 285 U. S. 136), contracts for payment of obligations of the taxpayer by another (Old Colony Trust Co. v. Commissioner, 279 U. S. 716; United States v. Boston & Maine R. Co., 279 U. S. 732) and payment of premiums of insurance on the life of the taxpayer from income of a trust created by him which was revocable (Du Pont v. Commissioner, 289 U. S. 685) or irrevocable (Burnet v. Wells, 289 U. S. 670).

[fol. 88] Among the devices employed to avoid income and estate taxes none has been more used than trusts dealing with members of a family and the courts have been alert to prevent such avoidance by this means. The question here is whether this trust is of that character—irrespective of whether tax avoidance was an impelling motive or was not. In determining this it is the effect upon rather than the motive of the creator in forming the trust. In the majority opinion in Burnet v. Wells, 289 U. S. 670, the validity of a statutory requirement (Section 219 (h) Revenue Acts of 1924 and 1926) that insurance premiums on the life of the creator paid from the trust were taxable to him as income was upheld because there was recognized a benefit to the creator there from the performance of a pressing social duty and a usual manner of providing for dependents (p. 681). The dissent was grounded on the view that the benefit to the creator must be "something more tangible than a purpose to perform a social duty, or the recognition of a moral claim as distinguished from a legal obligation" (p. 683); and that "the distinction to be observed is between the devotion of income to payments which the settlor is bound to make, and those which he is free to make or not make, as he may see fit" (p. 684).

The contention here by the Commissioner is that the income of this trust was employed to meet a legal obligation which appellee was bound to make. Whether this was the character of this trust is the determining problem. Before divorce, the legal obligation to provide maintenance for his wife rested upon appellee. Whether that obligation would continue after divorce would depend solely upon the orders of the court granting the divorce. As is not unusual, the parties agreed to a disposition having this situation in view. That disposition was clearly, as revealed in its terms, solely for the purpose of providing an annual income for the wife after divorce. It was not a transfer of title to property to the wife in lieu of what the court might order as alimony. The main practical and economic differences between this arrangement and one for decreed or agreed annual alimony payments by appellee are that it segregated a definite portion of his property to which alone the wife could look for annual income from her former husband and made the amount of income to her largely dependent on the income from his property. The purpose and effect of this arrangement was to provide a substitute

for alimony. This effect became a finality when the decree [fol. 89] of divorce specifically provided that appellee should "provide and create" the above trust fund and that the wife "have the provision therein made in lieu of all other alimony or interest in the property or estate" of appellee.

The only thing the wife received was income from the trust estate. She received this only because it was "in lieu of all other alimony" or interest. The trust was created for the sole purpose of furnishing such income. Its function was to provide a method of paying alimony. The payment of alimony was ordered and this method prescribed by the court. The payment of alimony in this form was a legal obligation which appellee was bound to meet. This took the form of "income". It was taxable as income. It was taxable (under either opinion in Burnet v. Wells supra) to appellee because it directly benefitted him by discharging a legal obligation he was found to perform.

The judgment should be reversed and remanded with instructions to proceed in accord with this opinion.

[fol. 90] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9938

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota, Appellant,

vs.

EDWARD B. DOUGLAS

JUDGMENT—September 13, 1934

Appeal from the District Court of the United States for the District of Minnesota

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby,

reversed with costs; and that Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, have and recover against Edward B. Douglas the sum of —— Dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with instructions to proceed in accordance with the opinion of this Court filed herein September 10, 1934.

September 13, 1934.

[fols. 91-98] Petition for Rehearing, covering 8 pages, filed Oct. 8, 1934, omitted from this print. It was denied, and nothing more, by order of Oct. 22, 1934.

[fol. 99] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—October 22, 1934

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellee.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

October 22, 1934.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed Oct. 26, 1934

Now comes the above named Appellee, Edward B. Douglas, by Leland W. Scott, his attorney, and respectfully moves this Honorable Court to stay and withhold its mandate in the above entitled action, for the purpose of permitting said Appellee to file with the Clerk of the Supreme Court of the United States his petition for a writ of certiorari in said cause, until and including the 30th day of November, 1934, and to order that the stay of said mandate be continued, if on or before that date

said petition is filed and the Clerk of this Court receives from the Clerk of the Supreme Court his certificate of said filing, until the final disposition of said cause by the Supreme Court of the United States, all as provided by Rule 32 of this Court.

[fol. 100] Dated October 25, 1934.

Leland W. Scott, Attorney for Edward B. Douglas, Appellee, 1300 First National-Soo Line Bldg., Minneapolis, Minnesota. Of Counsel: Junell, Driscoll, Fletcher, Dorsey & Barker.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—October 29, 1934

On consideration of the motion of appellee for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

October 29, 1934.

[fol. 101] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 102] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 8, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certi-

fied copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,169. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 541. Edward B. Douglas, Petitioner, vs. Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota. Petition for a writ of certiorari and exhibit thereto. Filed November 26, 1934. File No. 541, O. T., 1934.

Office Supreme Court, U.
FILED
NOV 26 1934
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1934.

No. [redacted] 1

EDWARD B. DOUGLAS,

Petitioner,

vs.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLARK R. FLETCHER,
1300 First National-Soo Line Bldg.,
Minneapolis, Minnesota,
Attorney for Petitioner.

Of Counsel:
LELAND W. SCOTT,
JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

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1. The Circuit Court of Appeals, in deciding that the income of the Trust created by Petitioner distributed to the life beneficiary is Petitioner's income, has decided that an assignor is taxable on the income of property arising after such property has been irrevocably assigned, although the assignor has relinquished the right to demand and obtain the income and control it after its receipt, and thus has decided an important question of Federal law which has not been but should be settled by this Court	14
(a) The income taxed to Petitioner is income of property held in trust and taxable to the fiduciary or the life beneficiary under Sections 219, Revenue Act of 1926, and 161 and 162, Revenue Act of 1928	14
(b) Neither Burnet vs. Wells, 289 U. S. 670, nor the doctrine that the amount of a legal obligation assumed and paid by an assignee of property is taxable income to the assignor, which controlled the view of the Circuit Court of Appeals, is applicable	18
2. The Circuit Court of Appeals, in deciding that the income of property irrevocably held in a trust established by the grantor pursuant to an agreement with his divorced wife, who accepted the benefits thereof in lieu of her interest (dower or statutory) in his property and estate and right to maintenance or support, distributable to and received by the wife, the life beneficiary, has decided that the divorced wife has not voluntarily elected to assume the position of a beneficiary or a donee and, thus, it has decided a question of Federal Income Tax Law in a way which is in conflict with applicable decisions of this court	21

3. The Circuit Court of Appeals, in deciding that Petitioner is taxable on the income of the trust created by him, distributable and distributed to the life beneficiary, has decided that, although property is irrevocably assigned and the assignor has irrevocably relinquished the right to demand and obtain the income thereof and control it after its receipt, the assignor is taxable on the income arising after the assignment and has thus rendered a decision in conflict with the decisions of other Circuit Courts of Appeal on the same matter..... 24

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Supreme Court of the United States

OCTOBER TERM, 1934.

No.....

EDWARD B. DOUGLAS,

Petitioner,

vs.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Edward B. Douglas prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals of the Eighth Circuit entered on September 10, 1934 (R. 88), reversing the judgment of the District Court (R. 64, 65). Petition for Rehearing was filed on October 8, 1934, and denied October 22, 1934 (R. 89-97).

STATEMENT OF THE MATTERS INVOLVED.

This cause involves the legality of including income of irrevocably assigned property, arising after the assignment

and received by another, in Petitioner's income for Federal income tax purposes.

QUESTION PRESENTED.

Whether the income of property, irrevocably held in a trust established by the grantor pursuant to an agreement with his divorced wife, who accepted the benefits thereof in full settlement of all interest (dower or statutory) in his property and estate and of all claim against him for maintenance and support, distributable to and received by the wife, the life beneficiary, is income of the grantor.

STATUTES INVOLVED.

Revenue Act of 1926, 44 Stat. 9, 23, 24, 32, 33, 37, 38:

Section 2, Definitions—

(a) Unless otherwise specifically provided when used in this Title—

1. The term "person" means an individual, a trust or estate, a partnership, or a corporation. * * *

9. The term "taxpayer" means any person subject to a tax imposed by this title. (26 U. S. C. A., Par. 1262.)

Section 212. (a) In the case of an individual, the term "net income" means the gross income as defined in Section 213, less the deductions allowed by Sections 214 and 206. * * * (26 U. S. C. A. 953.)

Section 213. (a) * * * The term "gross income" includes gains, profits and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from

interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period. (26 U. S. C. A., Par. 954.)

Section 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

* * * * * * * * *

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, * * *;

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in Section 212, except that—

* * * * * * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, * * *, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year;

* * * * * * * * *

(g) Where the grantor of a trust has, at any time during

the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor. (26 U. S. C. A., Par. 960.)

Section 225. (a) Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

* * * * * * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *

(b) Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made

by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct. Any fiduciary required to make a return under this Act shall be subject to all the provisions of this Act which apply to individuals. (26 U. S. C. A., Par. 966.)

(Corresponding sections of the Revenue Act of 1928, 45 Stat. 791, *i. e.*, Sections 21, 22, 143, 161, 162, 166, 167, 701, 26 U. S. C. A., Pars 2021, 2022, 2143, 2162, 2166, 2701, are substantially identical with the above sections.)

STATEMENT OF FACTS.

On September 12, 1923, Petitioner, Ida M. Douglas, his wife, and Minneapolis Trust Company, a corporation, as Trustee, executed an agreement in writing (Exhibit I, R. 7 to 14) in settlement and adjustment of their respective rights and interest in the estate and property of Petitioner, whereby Petitioner assigned to Minneapolis Trust Company the securities described therein (R. 17) of an aggregate par or estimated value of $300,000 and whereby Petitioner agreed to assign additional securities of an aggregate par value of $120,000 in trust, however, to pay the income from the trust estate to Ida M. Douglas annually during her lifetime in the amount of $15,000 per annum until November 6, 1927, and in the amount of $21,000 per annum beginning November 6, 1927, and continuing during her lifetime (R. 8). The Trustee was empowered to collect the interest and prin-

cipal from the securities constituting the corpus, to reinvest the same and to make up any deficiencies in installments due and payable to Ida M. Douglas by selling securities in the trust fund, or otherwise. In the event of such a deficiency it was to request Petitioner to make good the same. It was empowered, in its discretion, to pay Petitioner, his heirs, executors, administrators, or assigns, any excess of the net income of the trust over and above the payments required from time to time to be made to Ida M. Douglas (R. 9). Petitioner waived his right to designate and determine in what securities said trust should be invested (R. 69). Ida M. Douglas accepted the provisions of the trust in lieu of and in full settlement of alimony and of any and all dower rights and statutory interests in the estate of Petitioner and in lieu of any and all claims for separate maintenance and allowance for her support (R. 10). The corpus of the trust, upon the death of Ida M. Douglas, is to be assigned to Petitioner, his heirs or assigns, and the trust then terminates (R. 12).

On September 12, 1923, Petitioner transferred to the Trustee bonds, mortgages, and corporate stocks aggregating par or estimated value of $300,000 and on December 10, 1927, Petitioner transferred to the Trustee other securities of an aggregate par value of $128,000, as provided in the agreement of September 12, 1923 (R. 15). Mr. Douglas reserved no power to revoke the trust, to revest in himself title to any part of the corpus or to control the disposition of the income thereof. No part of the income of the trust was used to pay premiums on policies of insurance on Mr. Douglas' life.

On September 15, 1923, Mrs. Douglas commenced an action of divorce against Edward B. Douglas in the District Court in and for Beltrami County, Minnesota, and on that day said court entered its judgment and decree absolutely dissolving the bonds of matrimony existing between them

and discharging them from the obligations of their marriage contract and provided that Mr. Douglas should provide and create the trust fund aforesaid and that Mrs. Douglas should have the provisions therein made in lieu of all other alimony or interest in the property or estate of Petitioner (Exhibit VII, R. 54, 55).

The net income of the trust for the calendar years 1927 and 1928 was $12,610.52 and $17,617.39, respectively (R. 58, 59). The Trustee distributed these amounts to and they were received by Mrs. Douglas in said years (R. 63, 71, 74). Mr. Douglas did not include said amounts in the net income reported by him for Federal Income Tax purposes for the calendar years 1927 and 1928. The Commissioner of Internal Revenue determined that the income of the trust for 1927 and 1928 was income to Petitioner and, accordingly, determined deficiencies in his tax of $1,758.38 for 1927 and $2,581.74 for 1928 (R. 61, 62). (Part of the deficiency for 1928 arises by virtue of the inclusion in Mr. Douglas' income of a sum representing premiums paid on policies of insurance on his life constituting part of the corpus of another trust. This part is not here in controversy.) Mr. Douglas paid the deficiencies with interest under protest and filed claims for refund, together with interest, from the date of payment. Neither claim being allowed, Mr. Douglas sued in the United States District Court in and for the District of Minnesota, Third Division, for the recovery of the amounts claimed (R. 57, 58, 62).

Said cause was submitted on December 12, 1932, to the Court, upon agreement in writing waiving a jury, and on July 27, 1932, the Court filed Findings of Fact and Conclusions of Law and its Judgment (R. 64, 65) that Mr. Douglas recover of Respondent the sums of $2,094.78 and $2,554.03, with interest as required by law on each sum from the date

of payment thereof, together with his costs and disbursements.

Respondent appealed to the Circuit Court of Appeals and his assignments of error were that there was no substantial or sufficient evidence to sustain the judgment (R. 67). The Circuit Court of Appeals, being of the opinion (R. 83-88) that the decree of the divorce court constituted an award of alimony only; that the function of the trust was to provide a method prescribed by the court for the payment of alimony only; and that the payment of alimony in this form was a legal obligation, which Petitioner was bound to meet, held, upon the authority of *Burnet vs. Wells,* 289 U. S. 670, that the income of the trust received by Mrs. Douglas in 1927 and 1928 was taxable to Petitioner because he was directly benefited by the discharge thereby of said obligation. The Court accordingly reversed the judgment of the District Court (R. 88).

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred in holding

(1) That the income of the property assigned by Petitioner and held in trust, which was distributable and distributed to Ida M. Douglas, the life beneficiary, was taxable to Petitioner, in that such income is taxable either to the fiduciary or the beneficiary and not taxable to Petitioner.

(2) That Petitioner was legally obligated to pay alimony to his divorced wife, in that they effected a compromise and settlement whereby Petitioner's divorced wife elected to assume the position of a beneficiary or a donee.

(3) That the judgment of the District Court should be reversed, in that there is substantial evidence to support it which requires that the judgment be affirmed.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI.

1. The Circuit Court of Appeals, in deciding that the income of the trust created by Petitioner distributed to the life beneficiary is Petitioner's income, has decided that an assignor is taxable on the income of property arising after such property has been irrevocably assigned, although the assignor has relinquished the right to demand and obtain the income and control it after its receipt, and thus has decided an important question of Federal law which has not been but should be settled by this Court.

   (a) The income taxed to Petitioner is income of property held in trust and taxable to the fiduciary or the life beneficiary under Sections 219, Revenue Act of 1926, and 161 and 162, Revenue Act of 1928, *supra*.

   (b) Neither *Burnet vs. Wells*, 289 U. S. 670, nor the doctrine that the amount of a legal obligation assumed and paid by an assignee of property is taxable income to the assignor, which controlled the view of the Circuit Court of Appeals, is applicable.

2. The Circuit Court of Appeals, in deciding that the income of property irrevocably held in a trust established by the grantor pursuant to an agreement with his divorced wife, who accepted the benefits thereof in lieu of her interest (dower or statutory) in his property and estate and right to maintenance or support, distributable to and received by the wife, the life beneficiary, has decided that the divorced wife has not voluntarily elected to assume the position of a beneficiary or a donee and, thus, it has decided a question of

Federal income tax law in a way which is in conflict with applicable decisions of this Court.

3. The Circuit Court of Appeals, in deciding that Petitioner is taxable on the income of the trust created by him, distributable and distributed to the life beneficiary, has decided that, although property is irrevocably assigned and the assignor has irrevocably relinquished the right to demand and obtain the income thereof and control it after its receipt, the assignor is taxable on the income arising after the assignment and has thus rendered a decision in conflict with the decisions of other Circuit Courts of Appeal on the same matter.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Eighth Circuit and submits his brief hereto attached in support of this petition.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1934.

No.....

EDWARD B. DOUGLAS,

Petitioner,

vs.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Eighth Circuit, rendered September 10, 1934, ... F. (2d) ..., is found at page 88 of the Record. The United States District Court, District of Minnesota, filed no opinion.

JURISDICTION.

This Petition is made under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938. The date of the judgment asked to be reviewed is September 10, 1934. A Petition for Rehearing was denied October 22, 1934.

SUMMARY OF ARGUMENT.

1. The Circuit Court of Appeals, in deciding that the income of the trust created by Petitioner distributed to the life beneficiary is Petitioner's income, has decided that an assignor is taxable on the income of property arising after such property has been irrevocably assigned, although the assignor has relinquished the right to demand and obtain the income and control it after its receipt, and thus has decided an important question of Federal law which has not been but should be settled by this Court.

   (a) The income taxed to Petitioner is income of property held in trust and taxable to the fiduciary or the life beneficiary under Sections 219, Revenue Act of 1926, and 161 and 162, Revenue Act of 1928, *supra*.

   (b) Neither *Burnet vs. Wells*, 289 U. S. 670, nor the doctrine that the amount of a legal obligation assumed and paid by an assignee of property is taxable income to the assignor, which controlled the view of the Circuit Court of Appeals, is applicable.

2. The Circuit Court of Appeals, in deciding that the income of property irrevocably held in a trust established by the grantor pursuant to an agreement with his divorced wife, who accepted the benefits thereof in lieu of her interest (dower or statutory) in his property and estate and right to maintenance or support, distributable to and received by the wife, the life beneficiary, has decided that the divorced wife has not voluntarily elected to assume the position of a beneficiary or a donee and, thus, it has decided a question of Federal income tax law in a way which is in

conflict with applicable decisions of this Court.

(a) The decision conflicts with the principles underlying *Helvering, Commissioner of Internal Revenue, vs. Butterworth, et al., Trustees,* and *Helvering, Commissioner of Interpal Revenue, vs. Perdee, et al., Trustees,* 290 U. S. 365.

3. The Circuit Court of Appeals, in deciding that Petitioner is taxable on the income of the trust created by him, distributable and distributed to the life beneficiary, has decided that, although property is irrevocably assigned and the assignor has irrevocably relinquished the right to demand and obtain the income thereof and control it after its receipt, the assignor is taxable on the income arising after the assignment and has thus rendered a decision in conflict with the decisions of other Circuit Courts of Appeal on the same matter.

ARGUMENT.

1. THE CIRCUIT COURT OF APPEALS, IN DECIDING THAT THE INCOME OF THE TRUST CREATED BY PETITIONER DISTRIBUTED TO THE LIFE BENEFICIARY IS PETITIONER'S INCOME, HAS DECIDED THAT AN ASSIGNOR IS TAXABLE ON THE INCOME OF PROPERTY ARISING AFTER SUCH PROPERTY HAS BEEN IRREVOCABLY ASSIGNED, ALTHOUGH THE ASSIGNOR HAS RELINQUISHED THE RIGHT TO DEMAND AND OBTAIN THE INCOME AND CONTROL IT AFTER ITS RECEIPT, AND THUS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT.

(a) The income taxed to Petitioner is income of property held in trust and taxable to the fiduciary or the life beneficiary under Sections 219, Revenue Act of 1926, and 161 and 162, Revenue Act of 1928, *supra*.

The Congress has expressly provided that the income of property held in trust, with exceptions not here material, shall be taxed to the fiduciary or to the beneficiary in cases where the income is distributable. *Section 219, Revenue Act of 1926*, and *Sections 161 and 162, Revenue Act of 1928, supra*. The agreement (Exhibit I, R. 7) is effective to create a valid, express trust under Subdivisions 5 and 6, Section 8090, General Statutes of Minnesota, 1923; Mason's Minnesota Statutes, 1927, which are as follows:

"8090. Purposes of express trusts—Duration—Express trusts may be created for any of the following purposes:

* * * * * * * * *

(5) To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest

and loan the same for the benefit of the beneficiaries of such express trust; and the District Courts of the state shall, upon petition and hearing have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court.

(6) For the beneficial interests of any person or persons, whether such trust embraces real or personal property, or both, when the trust is fully expressed and clearly defined on the fact of the instrument creating it: Provided, that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in chapter 59."

Congdon vs. Congdon, 160 Minn. 343, 200 N. W. 76; *First Trust Company of St. Paul vs. Matheson, et al.,* 187 Minn. 468, 246 N. W. 1. The trust is irrevocable since Petitioner reserved no power to himself to alter or modify it or revest the corpus in himself. *Ewing vs. Warner,* 47 Minn. 446, 50 N. W. 603. The transfer was effective to divest Petitioner of the legal title to the corpus and invest Petitioner's divorced wife with an equitable interest for life in the trust, which became her separate estate and was transferable by her. *Jones vs. Clifton,* 101 U. S. 225; *Simmons vs. Northwestern Company,* 136 Minn. 357, 360, 162 N. W. 450; *Jacobson vs. Mankato Loan & Trust Co.,* 191 Minn. ..., 253 N. W. 365; *Perry, Trusts,* 7th Edition, Sec. 827 (a); *Walker vs.*

Walker's Executor, 9 Wall. 743; *Commissioner of Internal Revenue vs. Field* (C. C. A. 2), 42 F. (2d) 820.

The question involved in Petitioner's case has been before the United States Board of Tax Appeals in several cases, and it has construed and applied Sections 219, Revenue Act of 1926, and 161 and 162, Revenue Act of 1928, *supra*, to facts similar to those involved in Petitioner's case. The Board has held that property irrevocably assigned to a Trustee for the benefit of a divorced wife, who takes the benefits thereof in lieu of her interest in her former husband's property and all claim for maintenance and support, is not taxable to the assignor, the former husband. The Commissioner of Internal Revenue was in accord.

O. D. 1092, 5 C. B. 190 (July to December, 1921); *Lynch vs. Commissioner,* 23 B. T. A. 435; *Reginald Brooks vs. Commissioner,* 31 B. T. A. 70; *James H. Hyde vs. Commissioner,* 31 B. T. A. ...., No. 57. In *Hyde vs. Commissioner,* the Board says:

> "We think that no question can be raised but that a husband may make a valid gift of property to his wife and that thereafter the income from the donated property is the taxable income of the wife and not of the husband. We likewise think that it is plain that where a husband in good faith and not for the purpose of avoiding taxes creates a trust, the income from the trust fund to be paid currently to the wife, and the husband does not retain a power of revocation, the husband is not taxable upon income paid to the wife. We cannot see how the rule is any different where the husband creates a trust fund for the benefit of his divorced wife. Nor do we think it makes any difference that the divorced wife in the proceedings at bar relinquished all

claims for alimony, dower rights, maintenance and support in connection with the creation of a trust fund. See Reginald Brooks, 31 B. T. A. 70. She did not thereby acquire the right to receive the income from the fund by purchase for a valuable consideration. *Helvering vs. Butterworth, supra.*"

Where, as in Petitioner's case, property is irrevocably assigned and the assignor has relinquished the right to demand and obtain the income thereof and control it after its receipt, the rule is that income arising after the assignment is not taxable to the assignor. The rule is applicable even though the assignee is the assignor's wife or a trustee for the assignor's kin. *Commissioner vs. Field* (C. C. A. 2), 42 F. (2d) 820; *Langley vs. Commissioner* (C. C. A. 2), 61 F. (2d) 796; *Hall vs. Burnet* (C. A. D. C.), 54 F. (2d) 443, Certiorari denied, 285 U. S. 552. Since the same considerations as to ownership and control apply in cases involving the imposition of Federal estate and gift taxes on transfers of property, *Reinecke vs. Northern Trust Company*, 278 U. S. 339; *Burnet vs. Guggenheim*, 288 U. S. 280, and *Heiner vs. Donnan*, 285 U. S. 312, are apposite. The result reached by the Circuit Court of Appeals in Petitioner's case is aptly characterized by the following language from the opinion of this Court in *Heiner vs. Donnan, supra*:

"The result is that upon those who succeed to the decedent's estate there is imposed the burden of a tax, measured in part by property which comprises no portion of the estate, to which the estate is in no way related, and from which the estate derives no benefit of any description. *Plainly, this is to measure the tax on A's property by imputing to it in part the value of the property of B, a result which both the Schlesinger and Hoeper cases*

condemn as arbitrary and a denial of due process of law."

(b) Neither *Burnet vs. Wells*, 289 U. S. 670, nor the doctrine that the amount of a legal obligation assumed and paid by an assignee of property is taxable income to the assignor, which controlled the view of the Circuit Court of Appeals, is applicable.

The decision of this Court in the case of *Burnet vs. Wells*, 289 U. S. 670, controlled the view of the Circuit Court of Appeals regarding Petitioner's liability for the tax on the income of the trust created by him. It is apparent that the Court below felt compelled to reach the conclusion it did by the following statement of this Court made in the course of its opinion in the *Wells* decision:

> "The solidarity of the family is to make it possible for the taxpayer to surrender title to another and to keep dominion for himself, or, if not technical dominion, at least the substance of enjoyment" (p. 677).

We contend that the *Wells* case is inapplicable. There the constitutionality of Section 219 (h), Revenue Act of 1924, 43 Stat. 253, and Section 219 (h), Revenue Act of 1926, *supra*, was challenged and the sole issue was as to the power of Congress to extend the concept of ownership applicable to the grantor to include income of an irrevocable trust used to pay premiums on policies of insurance on the grantor's life. While the challenged enactment was upheld, this Court, in the course of its opinion, expressly says:

> "Trusts for the preservation of policies of insurance involve a continuing exercise by the settlor of a power to direct the application of the income along predeter-

mined channels. In this they are to be distinguished from trusts where the income of a fund, though payable to wife or kin, may be expended by the beneficiaries without restraint, may be given away or squandered, the founder of the trust doing nothing to impose his will upon the use" (p. 681).

The Circuit Court of Appeals ignored the distinction noted by this Court between trusts for the benefit of wife or kin not subject to the grantor's control and trusts for the preservation of policies of insurance and the facts that the income involved in Petitioner's case is not income used to pay premiums on policies of insurance on Petitioner's life and that the Congress had expressly provided for the taxation to the grantor of the income involved in the Wells case, factors not present in Petitioner's case. Here the property is not kept in a family, for the trust created by Petitioner is for the benefit of one who stands as a stranger to him. The life beneficiary is Petitioner's divorced wife and the divorce is absolute.

The doctrine that a legal obligation of one which is assumed and paid by another is income to the former is based upon the theory that the one legally obligated has been benefited to the extent of the amount of his legal obligation assumed and paid by another and that such benefit is the equivalent of taxable income. In finding that Petitioner has enjoyed the equivalent of taxable income the Circuit Court of Appeals has interpreted the divorce decree (R. 54-55) in a way which Petitioner contends is untenable. The decree clearly shows that an absolute divorce was granted. Petitioner's general duty to maintain and support his divorced wife was thereby terminated. It does not, in terms or by inference, require Petitioner to pay his divorced wife any

amount thereafter for her maintenance and support. It does order Petitioner to create the fund he had already created (R. 58). He had thus fulfilled the sole duty imposed upon him by the Court. It does require the wife to take the trust provisions in lieu of her interest in Petitioner's property and estate and of any further alimony or provision for maintenance and support. This she had agreed to do. Its effect is to confirm as fair and reasonable the agreement of the parties. *Nelson vs. Vassenden,* 115 Minn. 1, 131 N. W. 794. Petitioner's liability after the decree (Sec. 8603, General Statutes of Minnesota, 1923, *infra,* Appendix A) is so contingent that it does not furnish a reasonable basis for invoking the doctrine referred to. The cases which support the doctrine are not based upon contingent liabilities. *Old Colony Trust Co. vs. Commissioner,* 279 U. S. 716; *U. S. vs. Boston & Maine Railroad Company,* 279 U. S. 732. The finding that Petitioner is obligated to his divorced wife is an inference contrary to the facts expressed in the agreement (Exhibit I, R. 7 to 18) and the decree, *Frank vs. Commissioner of Internal Revenue* (C. C. A. 3), 51 F. (2d) 923, and to the binding effect of the divorced wife's release. *Cairns vs. Lewis,* 169 Minn. 156, 210 N. W. 885.

2. THE CIRCUIT COURT OF APPEALS, IN DECIDING THAT THE INCOME OF PROPERTY IRREVOCABLY HELD IN A TRUST ESTABLISHED BY THE GRANTOR PURSUANT TO AN AGREEMENT WITH HIS DIVORCED WIFE, WHO ACCEPTED THE BENEFITS THEREOF IN LIEU OF HER INTEREST (DOWER OR STATUTORY) IN HIS PROPERTY AND ESTATE AND RIGHT TO MAINTENANCE OR SUPPORT, DISTRIBUTABLE TO AND RECEIVED BY THE WIFE, THE LIFE BENEFICIARY, HAS DECIDED THAT THE DIVORCED WIFE HAS NOT VOLUNTARILY ELECTED TO ASSUME THE POSITION OF A BENEFICIARY OR A DONEE AND, THUS, IT HAS DECIDED A QUESTION OF FEDERAL INCOME TAX LAW IN A WAY WHICH IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The logical result of the rule announced by this Court in *Helvering, Commissioner of Internal Revenue, vs. Butterworth, et al., Trustees (Same vs. Pardee)*, 290 U. S. 365, that income of an established trust is taxable either to the fiduciary or the beneficiary, is that the grantor is not taxable on such income. It is conceded that this Court did not have before it the precise question involved in the case at bar or the question of a beneficiary's tax liability, but the opinion of the Court appears to be unequivocal in respect of its views thereon, for, after holding that

> "When she makes her election the widow decides to accept the benefits of the will with the accompanying rights and liabilities. In no proper sense does she purchase an annuity. For reasons satisfactory to herself, she expresses a desire to occupy the position of a beneficiary and we think she should be so treated,"

the Court, noting decisions of Circuit Courts of Appeal to the effect that payments of income to a widow were not subject to income tax until such time as the total receipts of the

trust amounted to the value of the widow's statutory interest which she had relinquished in order to accept under the will, says:

> "We cannot accept the reasoning advanced to support the three cases just cited. The evident general purpose of the statute was to tax in some way the whole income of all trust estates. If nothing was payable to beneficiaries, the income without deduction was assessable to the fiduciary. But he was entitled to credit for any sum paid to a beneficiary within the intendment of that word, and this amount then became taxable to the beneficiary. Certainly, Congress did not intend any income from a trust should escape taxation unless definitely exempted."

The principles underlying the foregoing decision are applicable to a trust created *inter vivos*:

Houston White, et al., as Trustees for Mrs. W. Woods White, et al., vs. J. T. Rose (C. C. A. 5, No. 7128, October 31, 1934), ... F. (2d) ..., 1934 Prentice Hall Federal Tax Service, Par. 1917; 343A C. C. H., Par. 9491, involved a transfer by the widow and children of an intestate of their statutory interests in common in his property to trustees in trust to pay, at least quarterly, to the widow during her life the net income remaining after paying expenses and excess trust income over and above that necessary for the widow's maintenance and support to the children, share and share alike, in the trustees' discretion, and at the widow's death to pay over the corpus and accrued income to the children. The widow, in addition to her statutory interest, transferred some shares of stock individually owned to the trustees. In holding that the widow was taxable under Section 162 of the Revenue Act of 1928 on the income of the trust distributed to her in 1928, the Circuit Court of Appeals says:

"The trust is a valid, active trust under Georgia law. Mrs. White, in entering into it exchanged her legal interest to the 250 shares of stock and to her interest in her husband's property for the income during her life from all the property not in excess of what was necessary for her maintenance and support according to her station in life. She is thus a purchaser, yet not a creditor of or an encumbrancer on the trust, but a beneficiary of it for her lifetime. She has no annuity, nor any equivalent of one. She is entitled to receive income only, no matter how little it may be—never any corpus. She may, if the income exceeds her needs in the judgment of the trustees, not get all of it, but she can never get more. What she gets is income. The trustees pay it and she receives it as such. They do not pay any debt on the trust, but they account for its income to her. She is the beneficiary of the trust, and they are her trustees. The case falls under *Helvering vs. Butterworth* rather than *Helvering vs. Pardee.* See also *Title Guarantee & Trust Co. vs. Commissioner,* 63 F. (2d) 621."

We submit that Ida M. Douglas had an interest in Petitioner's property and estate upon which she could have realized if she had sought relief from the divorce court and not entered into the agreement with Petitioner. (Sec. 8602, General Statutes, Minnesota, 1923, *infra,* Appendix A.) But she did voluntarily elect to accept the benefits of the trust created by the Petitioner in lieu of that interest and any claim she had for future maintenance and support. Accordingly, she elected to become a beneficiary or a donee under the doctrine of the *Butterworth* and *Pardee* cases, *supra.* It follows, we contend, that Petitioner is not taxable on the income of the trust distributed to his divorced wife.

3. THE CIRCUIT COURT OF APPEALS, IN DECIDING THAT PETITIONER IS TAXABLE ON THE INCOME OF THE TRUST CREATED BY HIM, DISTRIBUTABLE AND DISTRIBUTED TO THE LIFE BENEFICIARY, HAS DECIDED THAT, ALTHOUGH PROPERTY IS IRREVOCABLY ASSIGNED AND THE ASSIGNOR HAS IRREVOCABLY RELINQUISHED THE RIGHT TO DEMAND AND OBTAIN THE INCOME THEREOF AND CONTROL IT AFTER ITS RECEIPT, THE ASSIGNOR IS TAXABLE ON THE INCOME ARISING AFTER THE ASSIGNMENT, AND HAS THUS RENDERED A DECISION IN CONFLICT WITH THE DECISIONS OF OTHER CIRCUIT COURTS OF APPEAL ON THE SAME MATTER.

Commissioner of Internal Revenue vs. Field (C. C. A. 2), 42 F. (2d) 820, involved the effect for Federal income tax purposes of a deed by Marshall Field to his wife assigning to her a two-thirds interest "in all the income of two-fifths of the residuary estate of Marshall Field, deceased, • • • intending hereby to convey to and invest in" his wife "an undivided two-thirds interest in all the net income adjudicated to belong to" him by an Illinois decree. After finding that the grantor had an existing interest in the property conveyed, the Court held that after the assignment the income thereafter derived from the property was not taxable to the assignor. It says:

> "We do not understand that, where there are such (existing interests in property) they may not be assigned like other property, or that, when they have been, the income is still taxable to the assignor. Hence the case turns upon whether, after the Illinois decree, Marshall had a present interest in the income of Henry's share assignable under the law of Illinois. If so, his deed, as effectively divested him of the assigned interest, as though it had been land or chattels; his wife became

the beneficiary under the trust and was the only person who could be taxed." (Words in parentheses supplied.)

Langley vs. Commissioner of Internal Revenue (C. C. A. 2), 61 F. (2d) 796, involved trusts created by a mother in favor of her daughter and a nephew, where there was, as the trusts were amended, a power of revocation requiring, however, notice of one year and one day and where notice of revocation was not given in the year 1928, the year in which the Commissioner of Internal Revenue taxed the income of the trusts to the grantor under Section 166, Revenue Act of 1928, *supra*. In holding that the grantor could not be taxed on the trust income the Court says:

"In the instant case, the principal of the trust so far as 1928 was concerned, had been irrevocably transferred and did not belong to the petitioner, and she, having put it beyond all control, gave the income during that year to another recipient. She could not by her own positive act revest herself with title to the property during the year 1928, within the terms of the trust and she had no control over the principal until the termination of the trust in that year. Therefore she had lost control of the income during the period of taxation. *Burnet vs. Leininger*, 285 U. S. 136, 52 S. Ct. 345, 76 L. Ed. 665; *Mitchel vs. Bowers*, 15 F. (2d) 287 (C. C. A. 2). Since during the year no act could be done by the petitioner so as to bring to her any portion of the corpus of the trusts or the income thereof, she is not subject to taxation within the purview of section 166."

Hall vs. Burnet (C. A. D. C.), 54 F. (2d) 443, Certiorari denied, 285 U. S. 552, involved an assignment by a husband to his wife of an interest in a contract for commissions on

insurance renewals and it was held that the husband was not taxable upon the income thereafter derived from such interest by his wife.

Marshall vs. Commissioner (C. C. A. 6), 57 F. (2d) 633, Certiorari denied, 287 U. S. 621, involved the transfer by a husband to his wife of shares of stock and it was there held that dividends thereafter received could not be included in the husband's income.

Shellabarger vs. Commissioner of Internal Revenue (C. C. A. 7), 38 F. (2d) 566, involved the assignment by the beneficiary of a trust to another of part of the trust income to avoid a contest of a will and it was held that the assignor was not taxable on the trust income thereafter received by her for her assignee.

Francis R. Hart vs. Commissioner (C. C. A. 1), 54 F. (2d) 848, involved interest on Liberty Bonds collected in 1926 by a receiver appointed by a court for the taxpayer, pending review of a District Court decision. The Circuit Court reversed the decision of the District Court in 1927 and the bonds with accumulated interest were restored to the taxpayer. It was held that the interest collected in 1926 was taxable to the receiver as a fiduciary.

Petitioner respectfully suggest that, if the view of the Circuit Court of Appeals that the trust created by him is a means provided by the Court for the payment of income to Petitioner's divorced wife, it involves, nevertheless, a transfer of property upon trust which the divorce court was authorized to require (*Section 8601, General Statutes of Minnesota, 1923, infra, Appendix A*) and in effect an impounding property similar to the situation which obtained in the *Hart* case, in which event he is not taxable on the income in question.

CONCLUSION.

For the reasons stated your Petitioner respectfully prays that a Writ of Certiorari issue to enable this Court to review the judgment of the Circuit Court of Appeals in this case.

Dated November 16, 1934.

Respectfully submitted,

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APPENDIX A.

GENERAL STATUTES OF MINNESOTA, 1923:

8601. Trustee of alimony—The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require, for the faithful performance of their trust.

8602. Property of husband—Permanent alimony—Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case. The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or

authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate.

8603. Order for alimony, etc., revised—After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may revise and alter such order or decree respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action.

8607. Effect of divorce—Name of wife—Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree.

FILE COPY

SEP 21 19

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 1.

EDWARD B. DOUGLAS,

Petitioner,

vs.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE PETITIONER.

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No. 1.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE PETITIONER.

OPINIONS OF THE COURTS BELOW.

The District Court filed no opinion. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 82-87) is reported at 73 F. (2d) 130.

GROUNDS OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938. The judgment (R. 87, 88) of the United States Circuit Court of Appeals was entered on September 13, 1934. A Petition for Rehearing was denied

October 22, 1934 (R. 97). A Petition for a Writ of Certiorari was filed in this Court November 26, 1934. The Petition for Certiorari was denied January 7, 1935, but upon Petition for Rehearing the order denying the Petition for Certiorari was vacated and the Petition for Certiorari was granted April 8, 1935 (R. 89, 90).

QUESTION PRESENTED.

Is the income of property, irrevocably held in a trust established by a settlor pursuant to an agreement, made prior to divorce with his wife, who accepted the benefits of the trust in full settlement of all interest (dower or statutory) in the settlor's property and estate and of all claims against him for maintenance and support, which income is distributable to and is received by the wife, the life beneficiary, income of the settlor?

STATUTES INVOLVED.

The statutes involved are set forth in Appendices A and B.

STATEMENT.

On September 12, 1923, Petitioner, Edward B. Douglas, by a complete and irrevocable assignment in trust (Exs. I and II, R. 7-17) transferred securities of an aggregate par value of Four Hundred Twenty Thousand Dollars ($420,000) to Minneapolis Trust Company as Trustee to pay his wife, Ida M. Douglas, the sum of Fifteen Thousand Dollars ($15,000) each year until November 6, 1927, and thereafter for her life the sum of Twenty-one Thousand Dollars ($21,000) each year (R. 8, 9). It was expressly agreed that Mrs. Douglas would and she did accept this provision in

lieu of and in full settlement of alimony, any and all dower rights and statutory interests in Petitioner's estate, and all claims for maintenance and support (R. 10). It was also agreed that if the income of the property so held in trust at any time should prove insufficient to cover the specified payments to Mrs. Douglas, and Petitioner failed to make good any deficiency after being requested so to do by the Trustee, the Trustee might make up the deficiency by the sale of securities constituting the corpus of the trust (R. 9). It was also agreed that if the income of the trust property exceeded the specified payments to Mrs. Douglas, there being no impairment in the fund and the excess not being required in the judgment of the Trustee to be accumulated to insure the prompt payment of the future amounts payable to Mrs. Douglas, the excess income was to be paid to Petitioner, his heirs, executors, administrators, or assigns (R. 9). On November 10, 1923, Petitioner voluntarily waived the right, originally reserved to him in the trust agreement (R. 9), to designate and determine, subject to the Trustee's approval, the securities in which the trust *res* might be invested (R. 69, 70, 58).

On September 15, 1923, Mrs. Douglas was granted an absolute divorce from Petitioner (R. 70). In its decree the divorce court ordered that Petitioner "provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant" (R. 55, 70).

The distributable net income for 1927 and 1928 of the trust property, which income was actually distributed to and received by Mrs. Douglas, was $12,610.52 (R. 72, 58) and $17,617.39, respectively (R. 70, 59). Petitioner did not in-

clude these amounts in his gross income upon his income tax returns for the years 1927 and 1928 (R. 74, 71, 72). The Commissioner of Internal Revenue determined that these amounts were income to Petitioner and assessed taxes against him in respect thereto (R. 74, 72). Petitioner paid these taxes under protest (R. 74, 73). In a suit for the refund thereof the District Court gave judgment for Petitioner (R. 64, 65). This judgment was reversed by the Circuit Court of Appeals (R. 87, 88).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred in holding

(1) That the income of the property irrevocably assigned by Petitioner and held by the Trustee in trust, which income was distributable and distributed to Ida M. Douglas, the life beneficiary, was taxable to Petitioner, for the reason that that income is taxable either to the fiduciary or to the beneficiary and is not taxable to Petitioner.

(2) That Petitioner was legally obligated to pay alimony to his divorced wife, for the reason that Petitioner and his wife prior to divorce effected a compromise and settlement whereby she elected to assume the position of a beneficiary or a donee.

(3) That the judgment of the District Court should be reversed, for the reason that there is substantial evidence to support that judgment, which fact requires that the judgment be affirmed.

ARGUMENT.

The sole problem before the Court is the ascertainment of the person who is subject to tax, under the provisions of the Revenue Acts of 1926 and 1928, upon the income of the Ida M. Douglas Trust.

I.

THE IDA M. DOUGLAS TRUST IS VALID, BINDING, AND IRREVOCABLE, IS FULLY WITHOUT THE CONTROL OF PETITIONER, AND IS AN ESTABLISHED LEGAL ENTITY.

What was done by the parties and the divorce court:

It is plain and indisputable that Petitioner and his wife, Ida M. Douglas, entered into a formal and valid agreement or property settlement concerning Mrs. Douglas' interest in Petitioner's estate and the income thereof;[1] that under the agreement Petitioner conveyed, assigned, transferred, and set over valuable personal property to an irrevocable trust of which Minneapolis Trust Company was trustee (R. 7-17); that the trustee was authorized to hold the trust *res* in its name, to collect the interest and principal of the securities in the trust, to reinvest the same, to determine without the interference of Petitioner the investment to be made of the trust funds, to sell any part of the trust corpus in order to make good any deficiency in the amount of cash needed for the specified payments to the named beneficiary, to accumulate the income of the trust to insure prompt payments to

[1] Mason's Minnesota Statutes of 1927 provide: Women retain the same legal existence and personality after marriage as before (Sec. 8616); any married woman during coverture may receive and acquire property and the income thereof free from the control of her husband (Sec. 8617); every married woman is bound by her contracts and her property is liable for her debts to the same extent as if she were unmarried; she may make any contract which she could make if she were unmarried and shall be bound thereby (Sec. 8618); in relation to all subjects, other than real estate or any interest therein, husband and wife may contract with each other (Sec. 8621).

the beneficiary, and to pay the income installments to the named beneficiary (R. 9, 69, 70); that by the agreement Mrs. Douglas was named life beneficiary of the trust to the extent of a specified annual income (R. 8, 9).

It is equally plain and indisputable that under the agreement Mrs. Douglas accepted a life interest in the trust *res*, to the extent of the amounts of the annual payments, in lieu of and in full settlement of any and all alimony, claims for separate maintenance and support, and dower rights or statutory interests that she, as Petitioner's wife, might then have or in the future be entitled to in Petitioner's estate (R. 10); that the agreement was in no way conditioned upon the event of a divorce between Petitioner and Mrs. Douglas or upon the possibility of the divorce court's awarding Mrs. Douglas anything from Petitioner's estate or income; that at a time subsequent to the making of the agreement, the creation of the trust, and Petitioner's transfer of property thereto, Mrs. Douglas obtained from Petitioner an absolute divorce (R. 70, 55).

The income of the trust for the calendar years 1927 and 1928 consisted of dividends, interest, and other income (R. 73, 70). It was received by the trustee from the property constituting the fund in its possession and under its control. The income was distributed to Mrs. Douglas, the beneficiary, pursuant to the terms of the agreement (R. 73, 70).

What might have been done by the divorce court:

It is indisputable that, under the provisions of *Mason's Minnesota Statutes of 1927*, Section 8602, (see Appendix B), the divorce court might have awarded to Mrs. Douglas, upon her divorce, such part of the personal and real estate of Petitioner, not exceeding in value one-third thereof, as it deemed just and reasonable, provided Mrs. Douglas' own

estate and property restored or awarded to her were insufficient for her support, and, in addition, *alimony* from Petitioner's earnings and income. This the divorce court did not do. Instead, the effect of its judgment and decree was that Mrs. Douglas' estate and property, then being composed in part of her life estate in the trust *res*, was sufficient for her support and that, under the statute, the court should award to her no alimony or further property.

The legal effect of what was done:

The agreement, of course, was effective to create a trust valid under the laws of the State of Minnesota.[2] The trust was irrevocable.[3] The whole estate in law and in equity was vested in the trustee.[4] The agreement subjected the trustee to the duty of supporting and protecting the trust.[5] It invested Mrs. Douglas with a life estate in the trust fund which is regarded as her separate property. *Walker vs. Walker,* (1869) 9 Wall. 743, 753. That interest, it appears, is alienable.[6] There was left to Petitioner an estate in reversion only.

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[2]Mason's Minnesota Statutes of 1927, Sec. 8090 (5) and (6), see Appendix B; First Trust Company of St. Paul vs. Matheson, (1932) 187 Minn. 468, 246 N. W. 1; Congdon vs. Congdon, (1924) 160 Minn. 343, 200 N. W. 76.

[3]Ewing vs. Warner, (1891) 47 Minn. 446, 50 N. W. 603; see 1 Perry, Trusts and Trustees, (1929, 7th Ed.), Sec. 104.

[4]Mason's Minnesota Statutes of 1927, Sec. 8095, see Appendix B.

[5]Sterling vs. Sterling, (1899) 77 Minn. 12, 14, 79 N. W. 525; Congdon vs. Congdon, (1924) 160 Minn. 343, 376, 200 N. W. 76; see 3 Bogert, Trusts and Trustees, (1935) p. 1726.

[6]See Bunn, Spendthrift Trust in Minnesota, (1934), 18 Minn. Law Rev. 493, 498; see Fraser, Suspension of the Power of Alienation, (1925), 9 Minn. Law Rev. 314, 349; see Note (1931), 15 Minn. Law Rev. 570, 578; see Congdon vs. Congdon, (1924) 160 Minn. 343, 359, 200 N. W. 76, 81; see Simmons vs. Northwestern Trust Company, (1917) 136 Minn. 357, 361, 162 N. W. 450. See Melby vs. Nelson, (1926) 169 Minn. 273, 276, 211 N. W. 465; see 1 Bogert, Trusts and Trustees, (1935), p. 525; see American Law Institute, Restatement of the Law of Trusts, Sec. 128.

II.

The Ida M. Douglas Trust, Within the Meaning and Application of the Revenue Acts of 1926 and 1928, Is a Separate Taxable Entity and Its 1927 and 1928 Income Is Taxable to It or to Its Beneficiary and Not to Petitioner as Its Settlor.

Petitioner's position, in brief, is that the trustee of the Ida M. Douglas Trust, Mrs. Douglas, and Petitioner are separate taxpayers under the Revenue Acts, and that Petitioner is not accountable for tax upon that income of the trust accumulated for or paid to Mrs. Douglas. He bases this position upon the facts that the trustee acquired and held legal and equitable title, under the Minnesota statutes, to the trust *res*;[6] that the trust *res* was under the trustee's exclusive possession and control; that this situation was irrevocable by Petitioner and was subject to no interference by him (R. 69, 70); that Mrs. Douglas possessed an interest in the trust *res* which is recognized as her separate property; that the trust provisions of the Revenue Acts taxed the income realized either to the trustee or to the beneficiary; that the income of the trust in 1927 and 1928 was actually received from the trustee by Mrs. Douglas and enjoyed by her; that Petitioner had no right to receive or enjoy that income; that the receipt of that income by Mrs. Douglas was in itself in no sense a satisfaction of any obligation from Petitioner to her.

Provisions of the Revenue Acts:

The Revenue Acts of 1926 and 1928, under which the taxes in question were exacted from Petitioner, define "taxpayer" as "any person subject to a tax imposed by this Act."[7] "Person" is defined to mean "an individual, a trust or estate,

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[7] 1926 Act, Sec. 2 (a) (9); 1928 Act, Sec. 701 (a) (13).

a partnership, or a corporation."[8] "Fiduciary" means "a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person."[9] The fiduciary of every trust, the net income of which is over $1,500 or the gross income of which is over $5,000, is required to make an income tax return for the trust, and any fiduciary so required to make a return is subject to all the provisions of law applicable to individuals.[10]

Both Acts provide that gross income includes gains, profits, and income derived from dealings in property, whether real or personal, growing out of the use of or interest in such property, and gains or profits or income derived from any source whatever.[11]

The trust provisions of the Revenue Acts provide that the income taxes imposed upon individuals shall apply to the income of estates or of any kind of property held in trust, including income which is distributed currently by the fiduciary to the beneficiaries and income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. The tax shall be computed upon the net income of the estate or trust and shall be paid by the fiduciary.[12] There shall be allowed as a deduction in computing the net income of the estate or trust the amount of its income which is to be distributed currently by the fiduciary to the beneficiaries, and the amount so allowed shall be included in computing the net income of the beneficiaries.[13] Where, in the discretion of the grantor alone or in conjunction with any person not a beneficiary of the trust, the income may be distributed to the grantor or held or

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[8] 1926 Act, Sec. 2 (a) (1); 1928 Act, Sec. 701 (a) (1).
[9] 1926 Act, Sec. 200 (b); 1928 Act, Sec. 701 (a) (5).
[10] 1926 Act, Sec. 225; 1928 Act, Sec. 143.
[11] 1926 Act, Sec. 213 (a); 1928 Act, Sec. 22 (a).
[12] 1926 Act, Sec. 219; 1928 Act, Sec. 161.
[13] 1926 Act, Sec. 219; 1928 Act, Sec. 162.

accumulated for future distribution to him, or where any part of the income is or may be applied to the payment of premiums upon policies of insurance upon the life of the grantor, that income shall be included in the grantor's net income.[14]

It is submitted, therefore, that the Revenue Acts of 1926 and 1928 have specific application to the income of the Douglas trust and tax that income to the fiduciary or to the beneficiary thereof. The effect of the taxing sections in these Acts, although their presence was noted (R. 84), was entirely overlooked by the court below. See Note (1935), 48 Har. Law. Rev. 815, 818.

Application of the Revenue Acts:

1. The trust provisions of the Revenue Acts of 1926 and 1928, *supra*, are definite. The meaning to be given to them and the application to be made of them is clear:

> "Is this the reasonable construction of the language of the act, * * *? The rule which should be applied is established by many decisions. 'The legislature must be presumed to use words in their known and ordinary signification.' *Levy's Lessee vs. McCartee*, 6 Pet. 102, 110. 'The popular or received import of words furnishes the general rule for the interpretation of public laws.' *Maillard vs. Lawrence*, 16 How. 251, 261, * * *. As was said in *Lynch vs. Alworth-Stephens Co.*, 267 U. S. 364, 370, 'the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover.' This rule is applied

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[14] 1926 Act, Sec. 219 (h); 1928 Act, Sec. 167.

to taxing acts. *DeGanay vs. Lederer,* 250 U. S. 376, 381." *Old Colony R. R. Co. vs. Commissioner of Internal Revenue,* (1932) 284 U. S. 552, 560.

Inasmuch as taxing acts are here involved, the general rule requiring adherence to the letter applies with peculiar strictness in the instant case. *Crooks vs. Harrelson,* (1930) 282 U. S. 55, 61; *Grinnell vs. Commissioner,* (C. C. A. 2, 1934) 70 F. (2) 705, 708, affirmed 294 U. S. 153. These rules of law alone, it is submitted, demand the conclusion that the trust income paid to Mrs. Douglas is not income taxable to Petitioner.

2. In addition, however, the courts in decided cases have recognized the efficacy of the trust sections of the Revenue Acts.

> "• • • the law has seen fit to deal with this abstraction (trusts) for income tax purposes as a separate existence, making its own return under the hand of the fiduciary and claiming and receiving its own appropriate deductions." *Anderson vs. Wilson,* (1933) 289 U. S. 20, 27.

It has been held, accordingly, that the settlors of certain trusts may not be taxed on the income thereof even though each trust was created by the settlor for the support of his wife or children.

Schweitzer vs. Commissioner, (C. C. A. 7, 1935) 75 F. (2) 702, Certiorari applied for May 23, 1935.

Commissioner vs. Stokes, (C. C. A. 3, 1935) ... F. (2) ..., (353-A Commerce Clearing House, Par. 9528; Prentice Hall Federal Tax Service, 1935, Par. 1712).

Ferrer vs. Commissioner, (1930) 20 B. T. A. 811.

Blake vs. Commissioner, (1931) 23 B. T. A. 554.

Frank vs. Commissioner, (1933) 27 B. T. A. 1158.

Longyear vs. Commissioner, (1933) 28 B. T. A. 1086, affirmed (C. A. D. C.) 77 F. (2) 116.

Grosvenor vs. Commissioner, (1934) 31 B. T. A. 574, on appeal to Second Circuit.

Dillon vs. Commissioner, (1935) 32 B. T. A. . . ., No. 180.

Similarly, it has been held that a settlor may not be taxed on the income of a trust created by him prior to or after divorce for the benefit of his wife.

Lynch vs. Commissioner, (1931) 23 B. T. A. 435, Petition for Review dismissed (C. C. A. 5, Feb. 2, 1932).

Brooks vs. Commissioner, (1934) 31 B. T. A. 70, on appeal to Second Circuit.

Hyde vs. Commissioner, (1934) 31 B. T. A. 256, on appeal to Second Circuit.

Tuttle vs. Commissioner, (1934) 31 B. T. A. 782, on appeal to Sixth Circuit.

These cases, of course, are directly in point here and clearly indicate the attitude of the Board of Tax Appeals upon the question.

The Bureau of Internal Revenue, itself, for over ten years entertained a like view. *O. D. 1092, 5 C. B. 190 (1921),* overruling *O. D. 399, 2 C. B. 156 (1920),* and in turn revoked by *I. T. 2628, XI-1 C. B. 34 (1932).* During that ten year interval the Revenue Acts of 1924, 1926, and 1928 were enacted and the Revenue Act of 1932 was formulated with nothing in their provisions or in the accompanying Committee Reports to indicate that the rule of *O. D. 1092* was not approved by the Congress. The Revenue Act of 1934, likewise, contains nothing indicating disapproval of that rule, although by the time of its passage the attitude of the United States Board of Tax Appeals upon the point had become established by the *Lynch* Case, *supra.* The Congress could

easily have made effective any existent desire on its part to tax to the settlor the income of a trust such as that here involved by inserting in the Revenue Acts a direct provision to that effect.[15] The absence of such a provision forcefully indicates the lack of any intention on the part of the Congress to tax to the settlor of a trust of the type here involved the income thereof.

3. *Helvering vs. Butterworth*, (1933) 290 U. S. 365, is particularly helpful. That case involved the question whether the distributed income of a testamentary trust created by the decedent for his wife's benefit was an allowable deduction for the fiduciary or whether it was taxable to the trust. This court held it was a proper deduction and noted that the general purpose of the Revenue Act was to tax in some way the entire income of all trust estates. It was said, p. 370:

> "When she makes her election the widow decides to accept the benefits of the will with the accompanying rights and liabilities. In no proper sense does she purchase an annuity. For reasons satisfactory to herself, she expresses a desire to occupy the position of a beneficiary and we think she should be so treated."

No sound reason exists why the beneficiary of the Douglas trust, who had elected to accept the benefits of that trust, should be relieved of a tax on a large annual income or treated with any more solicitude than was Mrs. Butterworth. See *Note (1935), 48 Har. Law Rev. 815, 820.* In both cases what is in fact the beneficiary's capital and separate property produces the type of income specifically recognized by the

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[15]Compare the birth of Section 219 (g) and (h) of the Revenue Act of 1924 (43 Stat. 253, 277) whereby the tax base of the settlor of a trust was specifically enlarged to include the income of revocable trusts, trust income distributed to or held or accumulated for the grantor, and trust income used to pay premiums on policies of insurance on the grantor's life.

trust provisions of the Revenue Acts as actually received by a separate taxable entity and taxable to the one who has the use and enjoyment thereof.

4. Petitioner's position is further fortified by the fact that the income received by Mrs. Douglas under the trust was not alimony. As has been shown, *supra*, pp. 5, 6, the trust agreement between Petitioner and Mrs. Douglas was a *property settlement* which the parties as husband and wife were fully competent to make under the terms of the Minnesota statutes.[1] The Supreme Court of Minnesota has recognized the essential distinction between a division of property and an award of alimony. *Bensel vs. Hall,* (1929) 177 Minn. 178, 181, 225 N. W. 104. By virtue of the divorce statutes,[16] (and Minnesota courts, with respect to divorce, have only those powers expressly delegated by statute, *Ostrander vs. Ostrander,* (1934) 190 Minn. 547, 549, 252 N. W. 449, 450), the court was fully empowered to decree to Mrs. Douglas her separate property, or, if in its estimation that was not sufficient, any portion of Petitioner's property not exceeding in value one-third thereof, or *alimony,* i. e., any portion, not exceeding one-third, of Petitioner's earnings and income. The divorce court, however, obviously operating on the theory that the property settlement theretofore made by the parties sufficiently set over to Mrs. Douglas all her property and all that could properly be allotted to her from Petitioner's property and income, made to her no award or order for alimony. The United States Circuit Court of Appeals for the Eighth Circuit, in finding that the payment of the trust income to Mrs. Douglas was "a method of paying alimony" (R. 87), misconstrued the actual terms of the divorce decree (R. 54, 55) and failed to appreciate the distinction between a

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[16]Mason's Minnesota Statutes of 1927, Sec. 8602.

property settlement and alimony. The divorce decree must be read in the light of *Mason's Minnesota Statutes of 1927*, Sec. 8602, and, when so read, it is clear that there was, in substance, a mere approval of the earlier *division of property*.

Von Trott vs. Von Trott, (1903) 118 Wis. 29, 94 N. W. 798.

Kistler vs. Kistler, (1910) 141 Wis. 491, 124 N. W. 1028.

Steinkopf vs. Steinkopf, (1917) 165 Wis. 224, 161 N. W. 757, 759.

Farmers & Merchants Bank vs. Dondelinger, (1918) 103 Kans. 444, 175 Pac. 109, 110.

Petitioner, after the execution of the agreement of September 12, 1923, was under no further legal or moral obligation to his wife.

III.

THE AUTHORITIES RELIED UPON BY THE COMMISSIONER AND THE COURT BELOW AFFORD NO AID IN THE SOLUTION OF THE PROBLEM.

1. The United States Circuit Court of Appeals for the Eighth Circuit was of the opinion that its conclusion is supported by *Burnet vs. Wells*, (1933) 289 U. S. 670. That case, however, solely concerned the question whether the Congress could *constitutionally* tax to a settlor the income of irrecovable trusts used to pay premiums upon policies of insurance on the settlor's life. The statutes involved were Sections 219 (h) of the Revenue Acts of 1924 and 1926, 43 Stat. 277, 44 Stat. 34. It is submitted that the case at bar concerns primarily not a question of *power* on the part of the Congress but, instead, a question whether the Congress has *in fact* taxed to Petitioner the income of the Ida M. Douglas Trust under Sections 2, 213, and 219 of the Revenue Act of

1926 and under Sections 701, 22, 161, and 162 of the Revenue Act of 1928. The distinction has been well expressed by the United States Board of Tax Appeals:

> "(In *Willcuts vs. Douglas*) the court apparently failed to appreciate the fact that in the *Wells* case there was specific statutory authority for including in the income of the grantor the amounts applicable to the payment of the insurance premiums." *Grosvenor vs. Commissioner,* (1934) 31 B. T. A. 574, 576.

See also *Note (1935), 30 Ill. Law Rev. 249, 251, 252;* See *Comment (1935), 44 Yale Law Journal, 1409, 1415;* See *Note (1935), 48 Har. Law Rev. 815, 818;* See *Helvering vs. Grinnell,* (1935) 294 U. S. 153.

2. *Gould vs. Gould,* (1917) 245 U. S. 151, does not stand in the way of the conclusion urged by Petitioner for the reasons that it concerned strict alimony payments, the separation was one only from bed and board and was not an absolute divorce, and the case did not involve an irrevocable trust over which no control was exercised by the husband.

3. *Appleby vs. Commissioner,* (1925) 2 B. T. A. 1061; *Welch vs. Commissioner,* (1928) 12 B. T. A. 800, and *Turner vs. Commissioner,* (1933) 28 B. T. A. 91, affirmed (C. C. A. 2), 71 F. (2) 1018, are all distinguishable because the trust in each of these cases was not one fully beyond the settlor's control, the ownership of the trust *res* had not departed from him, and the trust was established primarily only to *secure* specified payments to be made from other sources to the settlor's wife.

Spencer vs. Commissioner, (1930) 20 B. T. A. 58, is distinguishable because the case did not precisely concern the taxability of trust income to the settlor. This fact has been held by the Board sufficient to make the case of no value

as an authority where the very different question of the case at bar is in issue. *Brooks vs. Commissioner,* (1934) 31 B. T. A. 70, 74, on appeal to Second Circuit; see *Savage vs. Commissioner,* (1934) 31 B. T. A. 633, 636, on appeal to Third Circuit. Further, the decision is based in part upon *Warner vs. Walsh,* (C. C. A. 2, 1926) 15 F. (2) 367, and *United States vs. Bolster,* (C. C. A. 1, 1928) 26 F. (2) 760, both of which cases were definitely disapproved by this court in *Helvering vs. Butterworth,* (1933) 290 U. S. 365, 369.

4. Because the receipt by Mrs. Douglas of income from the trust was in no way the satisfaction of an obligation owing Mrs. Douglas by Petitioner, those cases embracing the doctrine of constructive receipt of income and therefore taxing to a taxpayer the payment by another of an obligation owing him are definitely *not* in point. See *Note (1935), 30 Ill. Law Rev. 249, 252.* Cases of this type are *Old Colony Trust Company vs. Commissioner,* (1929) 279 U. S. 716, 729; *United States vs. Boston & Maine Railroad,* (1929) 279 U. S. 732; *United States vs. Mahoning Coal R. R. Co.,* (C. C. A. 6, 1931) 51 F. (2) 208, certiorari denied 285 U. S. 559. In each of these, as distinguished from the instant case, the payor was under a definite legal obligation to the taxpayer and he had the unqualified right to demand possession of and dominion over the income held to be his income. Further, not one of the cases concerned trust income, but, instead, concerned income which, if not taxed to the obligor, would have escaped taxation because the payments were deductible to the payor.

CONCLUSION.

It is respectfully submitted, therefore, that the Ida M. Douglas Trust was an effective, valid, and irrevocable trust; that its creation constituted a property settlement between Petitioner and Mrs. Douglas; that the income of the trust paid to the beneficiary in 1927 and 1928 was not income taxable to Petitioner. For these reasons, Petitioner prays that the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, reversing the judgment of the United States District Court for the District of Minnesota, be itself reversed.

Respectfully submitted,

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APPENDIX A.

Revenue Act of 1926, 44 Stat. 9, 10, 23, 32, 33, 34, provides in part as follows:

Sec. 2 (a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

* * * * * * * * * *

(9) The term "taxpayer" means any person subject to a tax imposed by this Act.

* * * * * * * * * *

Sec. 200 (b) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * * * * * * * * *

Sec. 212 (a) In the case of an individual, the term "net income" means the gross income as defined in section 213, less the deductions allowed by sections 214 and 206.

* * * * * * * * *

Sec. 213. * * * (a) The term "gross income" includes gains, profits and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section

212, any such amounts are to be properly accounted for as of a different period.

Sec. 219 (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

* * * * * * * * *

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, * * *;

* * * * * * * * *

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * * * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries * * *, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year;

(3) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable

year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

* * * * * * * * *

(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor.

The corresponding sections (701, 21, 22 (a), 161, 162 (b), 167) of the Revenue Act of 1928, 45 Stat. 791, 878, 797, 838, 840, are substantially identical.

APPENDIX B.

Mason's Minnesota Statutes of 1927:

8090. Express trusts may be created for any of the following purposes:

* * * * * * * * *

(5). To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind and to invest and loan the same for the benefit of the beneficiaries of such express trust; and the district courts of the state shall, upon petition and hearing have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust

as to the court may seem right and proper; and express trusts created under the provisions of this paragraph shall be administered under the direction of the court.

(6). For the beneficial interests of any person or persons, whether such trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it: Provided, that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in chapter 59.

8095. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustee, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands but may enforce the performance of the trust in equity.

8602. Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case. The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability

of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate.

8607. Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree.

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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 541 1

EDWARD B. DOUGLAS,

Petitioner,

vs.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA,

Respondent.

PETITION FOR REHEARING.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Comes now the above named Petitioner, Edward B. Douglas, and presents this, his Petition for a Rehearing of the Petition for Certiorari in this case.

I.

The Petition for Certiorari was filed November 26, 1934, and was denied January 7, 1935. This Petition, although more than twenty-five days have elapsed since the denial of the Petition for Certiorari, is presented during the term when said Petition was denied and hence, as Petitioner believes, at a time when this Court has power to receive and consider the same upon its order. Rule 33, 286 U. S. 619, 28 U. S. C. A., *1934 Cumulative Annual Pocket Part*, p. 35.

II.

REASONS FOR PETITION FOR REHEARING.

Conflict Between Circuits Now Clearly Exists.

On February 23, 1935, the Circuit Court of Appeals of the Seventh Circuit rendered its decision in *Edmund O. Schweitzer vs. Commissioner of Internal Revenue*, Nos. 5323, 5324, ... F. (2d) ...., 1935 Prentice Hall Federal Tax Service, Par. 941; 353 Commerce Clearing House, Par. 9163; reversing 30 B. T. A. 155, that the grantor of trusts for the support, maintenance, and education of dependents whom he was legally obligated to support, maintain, and educate was not taxable on the income of the trusts under Sections 22, 166 and 167 of the *Revenue Act of 1928*, 45 Stat. 797 and 849, 26 U. S. C. A., Pars. 2022, 2166 and 2167. In so doing the Court expressly repudiated the principle that income of a fund irrevocably transferred in trust for the benefit of a dependent whom the grantor is legally obligated to support and maintain is taxable to the grantor, which controlled the decision of the Circuit Court of Appeals of the Eighth Circuit in Petitioner's case. *Willcuts vs. Douglas*, 73 F. (2d) 130. In the *Schweitzer* case the dependents are the minor children of the grantor, while in Petitioner's case the dependent is Petitioner's divorced wife.

In rejecting the principle aforesaid, the Circuit Court of Appeals of the Seventh Circuit says:

> "It (Circuit Court of Appeals of the Eighth Circuit) found that the trust income should be charged to the husband because it directly benefited him by discharging his obligation. No decision has been brought to our attention which supports a principle so broad in its terms. Such a rule would include voluntary payments

by a third party, and we think that was never contemplated by the law. It is obvious that the Court was relying upon that part of the decision in the Wells case which refers to the 'constructive receipt' doctrine, as involved in *Old Colony Trust Company vs. Commissioner,* 279 U. S. 716, and *Boston & Maine Railroad vs. Commissioner,* 279 U. S. 732. In the Old Colony case an employer by a contract of employment paid the income taxes of an employee, and the amount thus paid was included in the employee's gross income, because it was a part of the wage which he was to receive notwithstanding the fact that he did not receive it directly. In the Boston & Maine Railroad case a lessee by the terms of a lease paid all taxes upon the lessor's property or income, and such payments were included in the lessor's income, because it was a part of the consideration moving to the lessor under the lease. In neither of those cases was a trust involved.

"We have no quarrel with the decision in the Willcuts case if the court was of the opinion that the income was in fact owned by the taxpayer, but we feel constrained to disagree with it if the income is charged to him merely because it directly benefited him by discharging his obligation. To so hold we think would directly conflict with sections 161 (b) and 167 of the statutes." (Words in parentheses supplied.)

The Principal Is Involved in Cases Pending in Other Circuits.

The principle formulated by the Circuit Court of Appeals of the Eighth Circuit is involved in *Brooks vs. Commissioner,* 31 B. T. A. 70, on appeal to the Second Circuit; *Hyde*

vs. Commissioner, 31 B. T. A. 57, on appeal to the Second Circuit, and *Tuttle vs. Commissioner,* 31 B. T. A. 151, on appeal to the Sixth Circuit. As applied, it affects every taxpayer who has transferred funds for the benefit of members of his family, it nullifies the trust provisions of the Revenue laws, it imposes liability for taxes without statutory authorization, and has resulted in uncertainty and confusion. These considerations, it is respectfully urged, call for the construction of the income and trust provisions of the Revenue Acts by this Honorable Court.

A Correct Construction Will Result in a Different Disposition of Petitioner's Case.

A correct construction or interpretation of Sections 22, 166 and 167 of the *Revenue Act of 1928, supra,* and Sections 213 and 219 of the *Revenue Act of 1926,* 44 Stat. 23 and 32, 26 U. S. C. A., Pars. 954 and 960 (Note), must have resulted in a different disposition of Petitioner's case.

> "The case of *Willcuts vs. Douglas,* 73 F. (2d) 130, may be distinguishable, but if it is not, then we must respectfully disagree with the Court which decided that case. There the Court apparently failed to appreciate the fact that in the *Wells* case there was specific statutory authority for including in the income of the grantor the amounts applicable to the payment of the insurance premiums."
>
> *Theodore P. Grosvenor, Petitioner, vs. Commissioner of Internal Revenue, Respondent,* 31 B. T. A. 574.

For the foregoing reasons, Petitioner respectfully urges that this Court order an enlargement of the initial period within which Petition for Rehearing may be filed; that a

rehearing of Petitioner's Petition for Certiorari be granted; that upon further consideration the order of January 7, 1935, denying the Petition for Certiorari be revoked; and that the Writ of Certiorari issue.

CLARK R. FLETCHER,
Attorney for Petitioner.

Of Counsel:

LELAND W. SCOTT,

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER.

I, Clark R. Fletcher, counsel for the above named Petitioner, Edward B. Douglas, do hereby certify that the foregoing Petition for a Rehearing of this cause is presented in good faith and not for delay.

CLARK R. FLETCHER.

FILE COPY

No. [redacted] 1

In the Supreme Court of the United States

OCTOBER TERM, 1934

EDWARD B. DOUGLAS, PETITIONER

v.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 541

EDWARD B. DOUGLAS, PETITIONER

v.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 83–88) is as yet unreported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 13, 1934 (R. 88). A petition for rehearing was denied October 22, 1934 (R. 97). The petition for a writ of certiorari was filed November 26, 1934. The jurisdiction of this Court

is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer created an irrevocable trust to pay specified amounts annually out of the income thereof to his wife during her life in lieu of alimony, retaining all other interests in the trust to himself. Is he taxable as to such income as was in fact so distributed?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved appear in the Appendix, *infra,* pp. 7–9.

STATEMENT

The facts as found by the District Court (R. 57–63) and as they appear in the opinion of the Circuit Court of Appeals (R. 83–88) may be summarized as follows:

On September 12, 1923, the taxpayer created a trust to pay out of the net income thereof to his wife $15,000 annually until November 6, 1927, and thereafter $21,000 for life. The taxpayer reserved to himself, with certain qualifications,[1] the entire corpus as well as the excess income (R. 84).

---

[1] In the event that the net income should be insufficient to make such payments, the husband agreed to make good such deficiency upon request, or in default thereof, such deficiency to be made up from the principal of the fund. In the case of excess net income, the trustee might reserve therefrom reasonable amounts fairly to insure the promptness of future payments.

The wife agreed to accept such payments in lieu of and in full settlement of alimony. The divorce decree entered three days later incorporated that agreement (R. 85).

In 1927 and 1928 the taxpayer failed to report in his individual income-tax returns income realized by the trust and paid to his divorced wife pursuant to the trust agreement. The Commissioner determined that such amounts constituted taxable income to the petitioner, and the tax was paid under protest. In a suit for refund the District Court refused to uphold the Commissioner's determination, but its judgment was reversed by the Circuit Court of Appeals.

ARGUMENT

This case involves the narrow question whether the grantor of an irrevocable trust is accountable for the income therefrom to the extent that it is applied to free him of a legal obligation. The trust instrument in this case provided for fixed payments to the grantor's wife which she agreed to accept in lieu of, and in full settlement of alimony. The divorce decree, issued shortly after the execution of the trust indenture, incorporated that agreement. There seems but little room for doubt that the income of the trust, so employed, discharged *pro tanto* an obligation that the grantor was bound to meet.

The petitioner cites many decisions of this Court and of Circuit Courts of Appeals as being in con-

flict with the decision below. Those cases, however, do not appear to have any very close connection with the instant case. In none of them was the present issue raised.

The decision below is in accord with the well-settled principle that the payment of one's obligation by another may constitute taxable income to him whose obligation is discharged. *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. 716; *United States* v. *Boston & Maine R. R. Co.,* 279 U. S. 732; *United States* v. *Mahoning Coal R. R. Co.,* 51 F. (2d) 208 (C. C. A. 6th), certiorari denied, 285 U. S. 559.

The Government's position is further strengthened by the statutory prohibition against deductions for personal or family expenses. Section 215 (a)(1) of the Revenue Act of 1926, *infra,* p. 7. These provisions have been consistently construed to prevent a deduction for alimony. Regulations 69, Article 291, *infra,* p. 9; Regulations 74, Article 281, *infra,* p. 9. If the petitioner is correct on the merits, anyone with income-producing property could render that provision meaningless by a trust irrevocable as to such income as must be applied to discharge his personal obligations. The validity of a specific legislative declaration that income so applied should be deemed to be devoted to the grantor's use could scarcely be doubted. *Burnet* v. *Wells,* 289 U. S. 670, 682. One can hardly assign to Congress any intent to permit such circumvention, especially where the statutory definition of

gross income is sufficiently broad to include such income.

The decision of this Court in *Helvering* v. *Butterworth*, 290 U. S. 365, cited by the petitioner (Br. 21), is not authority to the contrary. The trusts there involved were established by will and the question presented was whether the income was taxable to the fiduciary or the beneficiary. The tax liability of the testator was not involved. Here the trust was created *inter vivos* and the income, by direction of the grantor, was used to satisfy his legal obligations. As this Court declared in the *Butterworth* case, Congress did not intend that any income from a trust should escape taxation unless definitely exempted. Under Section 219 (b) (2) of the Revenue Act of 1926 (*infra*, p. 8), and Section 162 (b) of the Revenue Act of 1928 (*infra*, p. 9), the fiduciary is permitted to deduct income which is to be distributed currently to the beneficiary. In *Gould* v. *Gould*, 245 U. S. 151, this Court held that alimony payments do not decrease the taxable income of the husband and, further, that they do not constitute taxable income to the wife. And the Board of Tax Appeals has held that the latter principle applies to payments received by the wife through the medium of a trust. *Mary R. Spencer* v. *Commissioner*, 20 B. T. A. 58. Relying upon this Court's decision in the *Gould* case, the Circuit Court of Appeals for the Second Circuit has determined that the income from a trust used

to pay alimony was taxable to the grantor. *Frank Turner* v. *Commissioner*, 71 F. (2d) 1018.

We submit that the decision in the *Butterworth* case does not apply in every situation where a trust has been created, and does not compel income in every case to be taxable, either to the fiduciary or the beneficiary. Certainly it would not be applicable to income from a trust over which the grantor retains a power of control. Cf. *Corliss* v. *Bowers*, 281 U. S. 376. Similarly, it should not operate to relieve from taxation income devoted to the payment of a legal obligation of the grantor.

CONCLUSION

The decision of the court below is correct. It is respectfully submitted that the petition should be denied.

J. CRAWFORD BIGGS,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
ARNOLD RAUM,
Special Assistants to the Attorney General.

DECEMBER 1934.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 213. * * *

(a) The term "gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities; or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * * (U. S. C. App., Title 26, Sec. 954.)

SEC. 215. (a) In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses; * * * (U. S. C. App., Title 26, Sec. 956.)

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

* * * * *

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

* * * * *

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding year;

(3) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

* * * * *

> (h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, * * * such part of the income of the trust shall be included in computing the net income of the grantor. (U. S. C. App., Title 26, Sec. 960.)

To the extent that they are material, the corresponding sections (22 (a), 24 (a), 162 (b), 167) of the Revenue Act of 1928, c. 852, 45 Stat. 791, 797, 802, 838, 840, are substantially identical with the above.

Treasury Regulations 69, issued under the Revenue Act of 1926:

> ART. 291. *Personal and family expenses.*—* * * Alimony and an allowance paid under a separation agreement are not deductible from gross income. * * *

This statement is also contained in Article 281 of Treasury Regulations 74, issued under the Revenue Act of 1928.

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 1

EDWARD B. DOUGLAS, PETITIONER

v.

LEVI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE for the District of Minnesota

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

No written opinion was rendered by the District Court. Its findings of fact and conclusions of law appear in the record at pages 56 to 64. The opinion of the Circuit Court of Appeals (R. 82–87) is reported in 73 F. (2d) 130.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 13, 1934. (R. 87–88.) A

petition for rehearing was denied October 22, 1934. (R. 88.) Petition for a writ of certiorari was filed November 26, 1934, and was granted April 8, 1935. (R. 89–90.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The petitioner in 1923 created a trust by the terms of which the trustee was to pay a specified income for life to the petitioner's wife, about to be divorced from him, in lieu of all alimony and any other rights in his estate, with the provision that if the income should be insufficient to meet the payments as they fell due, the trustee should request the petitioner to make good the deficiency, and if the petitioner should fail to do so, that the deficiency should be made up from the principal of the trust fund, and that in case any securities should become impaired or of doubtful value, the petitioner at the request of the trustee should substitute therefor an equal amount of income-producing securities satisfactory to the trustee. The trust further provided that in event the net income exceeded the required payments, and if the principal was not then impaired, the excess income should be paid to the petitioner, and that upon the wife's death the trust should terminate. The state court in granting the divorce decree specified that the wife should have the provision made in the trust

in lieu of all other alimony or interest in the property or estate of the petitioner.

The question presented is whether the portion of the income from the trust paid to the petitioner's divorced wife in 1927 and 1928 was taxable to the petitioner for those years.

STATUTES AND REGULATIONS INVOLVED

These will be found in the Appendix to this brief, *infra*, pp. 27–31.

STATEMENT

The petitioner brought this suit in the District Court for the District of Minnesota for the recovery of additional income taxes paid for the years 1927 and 1928. (R. 1–7.) Jury trial was waived in writing (R. 56), and the court made findings of fact and conclusions of law (R. 57–64). The facts so found may be summarized as follows:

On September 12, 1923, the petitioner, his wife, Ida M. Douglas, and Minneapolis Trust Company, as trustee, executed an agreement, a copy of which is attached to the petitioner's complaint filed in the District Court. (R. 7–12.) It provided that petitioner thereby assigned to the trustee certain securities listed in an attached schedule of a par or estimated value of $300,000, and that he would further assign and deliver on November 6, 1927, such portion of the properties as he would then receive from the estate of his father under the latter's will as $120,000 bore to the entire property then received by him under the will, the petitioner agree-

ing at said time to transfer to the said trustee securities of the par value of $120,000. (R. 8.) The trustee was to pay to Ida M. Douglas from the principal of the trust estate the sum of $30,000 for the purpose of satisfying certain accrued bills and attorney's fees, and from the income the following amounts in quarterly installments: (a) the sum of $15,000 per annum, beginning as of September 1, 1923, up to and until November 6, 1927; (b) the sum of $21,000 per annum, beginning November 6, 1927, and continuing during her lifetime. (R. 8-9.)

The agreement further provided that in case the net income was not sufficient at any time to make these payments, then the trustee should request such deficiency to be immediately made good by the petitioner, and if the petitioner should fail to do so before the next installment became payable, the trustee should make up the deficiency from the principal of the trust fund; that in case the net income exceeded the required payments, and if the principal was not impaired, the trustee should pay the excess to the petitioner, with the right, however, to reserve from time to time a reasonable amount of income to fairly insure the prompt payment of future installments to Ida M. Douglas; that if the principal should at any time be impaired, and if the petitioner should not make good such impairment, all income in excess of the amount required for annual payments and charges should be added to and become a part of the principal until

the aggregate should reach the principal amount specified; and that in case any securities in the fund should become impaired or of doubtful value, or not likely in the opinion of the trustee to produce a fair proportionate amount of the necessary income, then the petitioner, at the request of the trustee, should substitute therefor an equal amount of income-producing securities satisfactory to the trustee (R. 9–10).

It was expressly agreed that the provisions made for Ida M. Douglas in the agreement were in lieu of and in full settlement of alimony, and of any and all dower rights or statutory interests in the petitioner's estate, and in lieu of any and all claims for separate maintenance and allowance for her support. (R. 10.) It was provided that upon the death of Ida M. Douglas, the trustee should transfer all securities and money held by it to the petitioner, and the trust should then terminate. (R. 12.)

On September 12, 1923, the petitioner conveyed to the trustee the securities described in the schedule attached to the agreement, and on November 6, 1927, certain additional securities pursuant to the agreement. (R. 58, 15, 17.)

On September 15, 1923, the District Court of Beltrami County, Minnesota, entered a decree absolutely divorcing the petitioner and Ida M. Douglas, and further adjudging that the petitioner provide the trust fund as set out in the agreement between the parties on file with the trustee, and

that Ida M. Douglas have the provision therein made "in lieu of all other alimony" or interest in the property or estate of the petitioner. (R. 62–63, 55.)

The net income of the trust for the calendar year 1927 was $12,610.52, and for the calendar year 1928, $17,617.39. (R. 58–59.)[1] These amounts were not included by the petitioner in the gross income on his returns filed for those years. (R. 59–60.) Upon audit of the returns the Commissioner of Internal Revenue included the amounts in income and assessed additional taxes for those years, which, together with interest thereon, were paid by the petitioner under protest. (R. 60–63.) The petitioner duly filed claims for refund, and upon failure of the Commissioner to allow the same this suit was instituted.

The District Court concluded as a matter of law that in the taxable years involved the petitioner did not receive or enjoy the income of the trust or economic benefits of the property transferred (R. 63) and entered judgment in his favor (R. 64). The Circuit Court of Appeals, reversing the District Court, held that the amounts involved were taxable as income to the petitioner because they directly benefited him by discharging a legal obligation he was bound to perform.

---

[1] The taxability for 1928 of the income from another trust created by the petitioner on March 16, 1928 (R. 59) is not now involved.

SUMMARY OF ARGUMENT

The income from the trust operated to discharge the petitioner of a legal obligation. It was income to him within the meaning of the Sixteenth Amendment; it was also income to him within the statutory definition of gross income.

The petitioner is therefore accountable for such income unless the existence of the trust provisions of the statute precludes the operation of the gross income provision. The trust provisions, however, are silent as to such trusts, and if they do prevent the operation of the gross income provision, it is by implication only. It would seem clear that they have no such effect for two reasons: First, the courts have construed the trust provisions as non-exclusive; second, to construe the trust provisions as exclusive would furnish the means for circumventing the prior and long-existing statutory prohibition against deductions on account of personal expenses, and thus violate the sound rule of construction that where avoidance is made easy under one interpretation another is to be preferred.

Nor does the decision in *Helvering* v. *Butterworth,* 290 U. S. 365, require a different result. That case held that Congress evidenced an intention not to permit any trust income to escape taxation completely. There the sole question was as between trustee and beneficiary and the continuing obligation of another taxpayer was not involved. This Court held that since the trustee was not taxable under the statute, the beneficiary was subject

to the tax. It did not hold that in every type of trust the income must be taxed only to the fiduciary or the named beneficiary.

ARGUMENT

I

THE INCOME DERIVED FROM THE TRUST SECURITIES DURING THE TAXABLE YEARS WAS USED TO SATISFY THE PETITIONER'S LEGAL OBLIGATION FOR SUPPORT AND MAINTENANCE OF HIS DIVORCED WIFE, AND ACCORDINGLY CONSTITUTED INCOME OF THE PETITIONER TAXABLE AS SUCH

We submit it is plain that the trust was established to provide annual payments for the wife of the petitioner in satisfaction of his legal duty or obligation for her support and maintenance. The instrument provided for fixed payments to the petitioner's wife, which she agreed to accept in lieu of and in full settlement of alimony, and of any statutory interests in his estate, and in lieu of any separate maintenance and allowance for her support. The divorce decree, entered three days thereafter, directed the petitioner to provide the trust fund agreed upon, and that the wife should have the provision therein made in lieu of all other alimony or interest in the petitioner's estate (R. 55). Thus, although the terms were agreed upon before the divorce decree, that decree specifically provided for the payments thereafter made and established a legal obligation of the petitioner to the extent pro-

vided for in the trust. Cf. Mason's Minnesota Statutes, Sections 8601 and 8602, *infra*, p. 27.

The power of the court to make such a decree was not only provided by statute but was also inherent in its equity jurisdiction. *Bensel* v. *Hall*, 177 Minn. 178. This was not a contractual obligation, but was a legal one, founded upon the natural duty of the petitioner to support his wife after the termination of the marriage as well as during its existence, and translated into terms of money by the court decree. *Bensel* v. *Hall, supra; Sessions* v. *Sessions*, 178 Minn. 75. The court may modify or increase the award despite the fact that its original decree was made pursuant to stipulation of the parties. *Warren* v. *Warren*, 116 Minn. 458; *Randall* v. *Randall*, 181 Minn. 18; *Erickson* v. *Erickson*, 181 Minn. 421; *Haskell* v. *Haskell*, 119 Minn. 484. And the court is not controlled by the stipulation, but may adopt or reject it as seems consistent and proper. *Warren* v. *Warren, supra.*

The income paid during the years involved was thus used to meet a personal and legal obligation of the petitioner. Petitioner's liability was not met by the mere creation of the trust itself. As we have noted heretofore, it was subject to change by the court. Moreover, his wife did not have to look solely to the income of the trust for the payments of the specified amounts. If the income should be insufficient to meet the required payments the trustee could call upon the petitioner, and if he failed

to satisfy the deficiency, then it was to be met by application of a part of the corpus (R. 9).

Furthermore, if the principal became impaired, or in the judgment of the trustee was insufficient, the petitioner was bound to substitute other securities satisfactory to the trustee (R. 10). Thus, we submit, there was a continuing obligation upon the petitioner, adjudged by the court, to furnish sufficient funds to meet the specified annual payments, and the court below correctly determined that, to the extent that the income from the trust was actually paid to the divorced wife, it operated only *pro tanto* to discharge a continuing personal obligation of the creator.

Petitioner argues (Br. 14–15) that there was in substance merely an approval by the divorce court of an earlier division of property between the parties. This we contend is not an accurate description of the court's action. Under the statute (Mason's Minnesota Statutes (1927), Sec. 8602, *infra,* p. 27), the court may order to the wife for her support such part of the personal and real estate of the husband and such alimony out of his estate, earnings and income as it may deem just and reasonable, not exceeding in present value one-third of his personal estate, earnings and income, and one-third in value of his real estate. Apparently proceeding under the authority of this section the court awarded to the petitioner's wife the amount agreed upon, consisting of a yearly sum to continue during her life and ceasing upon

her death. The sum payable during each of the years involved was less than one-third of the petitioner's total net income, including the income from the trust. (R. 58–59, 60.)

This constituted, we contend, an annual income provided for the wife's support, and in no true sense a division of property. She received no title to the corpus of the trust, and the title held by the trustee was to revest in the petitioner or his heirs or assigns upon her death. No property was divided between the parties, the sole effect being to establish a present fund from which the payments were to be made in the first instance. Whatever its characterization, it represented a legal obligation of the petitioner for his wife's support, decreed by the court and subject to change, and met thereafter by payments from the income of the trust.[2]

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[2] In any event, the petitioner is precluded at this stage of the proceedings from contending that the income was not used to satisfy a legal obligation. The petition for certiorari in this case was originally denied and the subsequent granting thereof would seem to have been based solely upon the asserted conflict between this case and *Schweitzer* v. *Commissioner*, 75 F. (2d) 702 (C. C. A. 7th), decided subsequent to the original denial of certiorari here. The income in the *Schweitzer* case was used to discharge a legal obligation of the grantor and the alleged conflict between the two cases must necessarily presuppose the existence of a similar obligation here which was likewise discharged by the income from the trust. We believe, therefore, that it should be assumed, for the purpose of litigation in this Court, that the court below correctly disposed of this subsidiary issue. Cf. *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, 88; *Steele* v. *Drummond*, 275 U. S. 199, 203.

We submit, accordingly, that the income in question was so obviously devoted and used for the petitioner's own benefit as to constitute it his income taxable as such.

The principle, that the payment of one's obligations by another by the former's direction constitutes income to the person whose obligation is discharged, is exemplified by the decisions of this Court in *Old Colony Tr. Co.* v. *Commissioner*, 279 U. S. 716, and *United States* v. *Boston & M. R. Co.*, 279 U. S. 732. In the former case the amount of an employee's income taxes paid by his employer was held to be taxable income to the employee, and in the latter case it was held that a lessor received income where his income taxes were paid by the lessee. This principle was further extended in *United States* v. *Mahoning Coal R. R. Co.*, 51 F. (2d) 208 (C. C. A. 6th), certiorari denied, 285 U. S. 559, to a payment of income taxes of a lessor by a lessee, even though the lessee was under no obligation to pay the taxes. Again, it has been decided that an employee realized income where an employer paid premiums on a policy of insurance on the life of the employee even though the employee's wife was the beneficiary. *Yuengling* v. *Commissioner*, 69 F. (2d) 971 (C. C. A. 3d); *Adams* v. *Commissioner*, 18 B. T. A. 381; *Danforth* v. *Commissioner*, 18 B. T. A. 1221. Cf. *Lansill* v. *Burnet*, 58 F. (2d) 512 (App. D. C.)

We submit there is no real difference in principle between those situations and the case here. The

payments made to satisfy the petitioner's legal obligation were equivalent to receipt by him just as much as the payments of the taxpayers' income taxes were constructively received in the cases cited above. In each instance there was a substantial and real benefit to the taxpayer by reason of the satisfaction of his obligation. If the petitioner here had directed his bank to pay over income as it accrued from deposits for the support of his wife, we believe there can be no doubt that the income so accruing and paid would constitute taxable income to him in the first instance. The fact that he accomplished the same purpose and met his obligation by payments from a fund placed in trust should make no real difference in the incidence of the tax. The trust was simply a means by which he met his legal obligation to his wife, and the trustee was in reality acting as his agent for this purpose.

The gross income provisions of Section 213 of the Revenue Act of 1926 (*infra*, p. 28), and Section 22 (a) of the Revenue Act of 1928 (*infra*, p. 31) are broad and all-inclusive. They tax income from whatever source derived. This Court has stated that Congress intended to use its power to the full extent. *Irwin* v. *Gavit*, 268 U. S. 161, 166; *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 89. We submit that under these provisions the income for the years 1927 and 1928 was taxable to the petitioner. There can be no doubt that this constituted income which might constitutionally be taxed to

the petitioner. This is illustrated by the decision of this Court in *Burnet* v. *Wells*, 289 U. S. 670, holding that under the statute income from an irrevocable trust devoted by direction of the grantor to pay premiums on his life insurance policies was taxable as his income. While the statute under consideration there specifically laid a tax upon the grantor of the trust, and the sole question involved the constitutionality of the provision, the necessity of a specific legislative direction may well be doubted in view of the broad gross income provisions of the Revenue Acts. So, in *Corliss* v. *Bowers*, 281 U. S. 376, this Court upheld the validity of a legislative provision specifically taxing income to a grantor of a trust who retained the power to revoke. Yet in certain cases involving similar circumstances, but under Revenue Acts containing no such specific provision, the courts have held that the income was taxable to the grantor. Cf. *McCauley* v. *Commissioner*, 44 F. (2d) 919 (C. C. A. 5th); *Dickey* v. *Burnet*, 56 F. (2d) 917 (C. C. A. 8th), certiorari denied, 287 U. S. 606; *O'Donnell* v. *Commissioner*, 64 F. (2d) 634 (C. C. A. 9th), certiorari denied, 290 U. S. 699.

In the *McCauley* case the court, discussing the decision in *Corliss* v. *Bowers*, *supra*, said (p. 920):

> It is true that decision is under the Revenue Act of 1924 §§ 219 (g), (h), 26 U. S. C. A. § 960 note, which provided in terms that the grantor of a trust who reserved the power to revest in himself title to any part

> of the corpus of the trust should be liable for the tax. But that Revenue Act, as it appears to us from its history, was merely declaratory of existing law, and the language quoted is therefore applicable to the facts of this case.

In the *Wells* case, *supra*, this Court, in holding that the income from a trust used to pay insurance premiums might be taxed as income to the grantor, also indicated that such taxation was desirable in order to prevent avoidance of taxes by taxpayers who had contrived to keep the larger benefits of ownership and be relieved of the attendant burdens. In this respect this Court said in part (p. 677):

> Through the devices thus neutralized as well as through many others there runs a common thread of purpose. The solidarity of the family is to make it possible for the taxpayer to surrender title to another and to keep dominion for himself, or if not technical dominion, at least the substance of enjoyment. At times escape has been blocked by the resources of the judicial process without the aid of legislation. * * *. In these and other cases there has been a progressive endeavor by the Congress and the courts to bring about a correspondence between the legal concept of ownership and the economic realities of enjoyment or fruition. Of a piece with that endeavor is the statute now assailed.

We contend that the present situation is one where such avoidance may and should be prevented

if necessary by judicial process, which can be accomplished without doing violence to the law. There is no need for a specific legislative declaration in view of the broad scope of the gross income provisions of the statute. This is a stronger case than the *Wells* case, *supra*, in which to hold that income is attributable and taxable to the grantor. There the income was not used to satisfy a strict legal obligation but was devoted to keeping alive contracts of insurance which the taxpayer was not forced to continue. The dissenting opinion in the *Wells* case recognizes that income devoted to payments which the settlor is bound to make has (p. 684) "the substantial elements of income to the settlor." Clearly, in the present case, since the income was devoted pursuant to court decree to meet the obligation of the petitioner to provide an annual income for his wife, it had the substantial elements of income to the petitioner.[3] Therefore, even if the grantor in the *Wells* case would not have been taxable in the absence of a specific legislative declaration, we submit that the income herein is economically more closely income to the grantor than in the *Wells* case, and hence may be included in the gross income provision of the statute.

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[3] The members of the Court who dissented in the *Wells* case concurred in the companion case of *DuPont* v. *Commissioner*, 289 U. S. 685, on the ground that the grantor in the latter case did not divest himself permanently of title to the trust property. It is worthy of note that the grantor herein similarly reserved to himself the corpus, to be turned over to him at the termination of the trust.

Authority on the point involved is conflicting. The present administrative rulings provide that the settlor shall be taxed upon income from an irrevocable trust created to provide payments in lieu of alimony. I. T. 2628, XI–1 Cumulative Bulletin 34; G. C. M. 13308, XIII–2 Cumulative Bulletin 184. This represented the earlier view of the Bureau (O. D. 399, 2 Cumulative Bulletin 156), which had been overruled (O. D. 1092, 5 Cumulative Bulletin 190). The Board of Tax Appeals has held that income derived from trusts created to meet alimony payments is not taxable to the creator. *Lynch* v. *Commissioner*, 23 B. T. A. 435, petition for review dismissed without opinion, by the Circuit Court of Appeals for the Fifth Circuit on February 2, 1932; *Brooks* v. *Commissioner*, 31 B. T. A. 70; *Hyde* v. *Commissioner*, 31 B. T. A. 256; *Tuttle* v. *Commissioner*, 31 B. T. A. 782. But cf. *Spencer* v. *Commissioner*, 20 B. T. A. 58. In those cases, however, the trusts were created merely by agreement, pursuant to no direction by the court decreeing the divorce, and the Board has expressly distinguished this case on that ground. *Tuttle* v. *Commissioner*, *supra*. Accordingly, the attitude of the Board in a case where the obligation is adjudged by the court is a matter of conjecture.[4] In *Coxey* v. *Commis-*

[4] The Board's treatment of the similar class of cases involving trusts for maintenance and support of minor children has not been entirely consistent. In *Schweitzer* v. *Commissioner*, 30 B. T. A. 155, the grantor was held accountable. But he was held not liable in *Stokes* v. *Com-*

sioner, decided September 25, 1935, not yet officially reported, the Circuit Court of Appeals for the Third Circuit, one judge dissenting, affirmed the Board's decision, refusing to tax the husband where the assignment of trust income was made some time before divorce and the decree made no provision for alimony.

Certain other decisions of the Board and of the courts are, we contend, authority for taxation of the petitioner in the instant case, even without specific declaration in the divorce decree. Those are cases in which it has been held that alimony payments made from a fund transferred or dedicated as collateral security for such payments were taxable as income to the husband. *Welch* v. *Commissioner,* 12 B. T. A. 800; *Turner* v. *Commissioner,* 28 B. T. A. 91, affirmed, *per curiam* (on the authority of *Gould* v. *Gould,* 245 U. S. 151) by the Circuit Court of Appeals for the Second Circuit, 71 F. (2d) 1018; *Longyear* v. *Commissioner,* 28 B. T. A. 1086, affirmed, 77 F. (2d) 116 (App. D. C.). The provisions of the agreement demonstrate that substantially the same situation exists here. The petitioner's wife was to receive, not the entire income which might result from the securities trans-

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missioner, 28 B. T. A. 1243, affirmed July 31, 1935, not yet officially reported but may be found in C. C. H. (1935), Vol. 3-A, p. 10307 (C. C. A. 3d); *Yeiser* v. *Commissioner,* unpublished decision, affirmed, 75 F. (2d) 956 (C. C. A. 6th); *Grosvenor* v. *Commissioner,* 31 B. T. A. 574; *Savage* v. *Commissioner,* 31 B. T. A. 633; *Clark* v. *Commissioner,* 31 B. T. A. 1082.

ferred to the trustee, but a specified yearly amount, and the trustee held the fund only for the period during which the payments were required to be made. The petitioner could be called upon to supply any deficiency in the income, and in default it might be made good from the principal. Furthermore, the petitioner was required to make good any impairment of the principal. In essence the fund placed in trust was no more than security to insure the payment of amounts due from the petitioner for the support of his wife.

The fact that legal title to the principal rested temporarily in another should not prevent taxation of the payments as petitioner's income any more than did a similar situation in the *Turner* and *Longyear* cases, *supra*. As stated by this Court in *Corliss* v. *Bowers*, 281 U. S. 376, 378, and repeated in *Burnet* v. *Wells*, 289 U. S. 670, 678, "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid." The petitioner here did not divest himself of all interest in the fund which produced the income. It reverted to him or his heirs upon his wife's death, when the obligation to support ceased. Prior to that time he had the right to recover the securities by substitution and thus dispose of them, subject only to the approval of the trustee. (R. 9). Meanwhile, the income was devoted to the payment of his obligation, and he was in a real sense the beneficiary of the trust. We submit that

the amounts so paid during the taxable years were income to the petitioner within the purview of the gross income provisions of the statutes, *infra*, and were properly taxable to him as such.[5]

II

THE TRUST PROVISIONS OF THE STATUTES INVOLVED DO NOT PRECLUDE THE TAXATION OF THIS INCOME TO THE PETITIONER

We believe it is plain, as above indicated, that the income herein should be considered as falling within the general definition of gross income, taxable to the grantor. But the petitioner contends that the trust provisions (Section 219, Revenue Act of 1926, *infra*, p. 29; Section 162 (b), Revenue Act of 1928, *infra*, p. 31) furnish an exclusive method

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[5] The situation herein is also not unlike that in those cases in which an assignor of income has been held taxable although the assignment was irrevocable. The court, in *Commissioner* v. *Plant*, 76 F. (2d) 8 (C. C. A. 2d), commented on that similarity, saying (p. 10):

> The recent decision of the Court of Appeals of the Eighth Circuit in *Willcuts* v. *Douglas*, 73 F. (2d) 130, is also relied on by the Commissioner. There a trust was set up by a husband containing a provision for his wife in lieu of alimony as required by a decree of divorce. The income, though payable to her, was held taxable against the settlor. But in that case the income was derived from property originally belonging to the settlor, and was devoted to the discharge of the latter's legal obligations. The transaction resembled an assignment by a husband to his wife of his future salary or of his interest in future profits of his firm. *Lucas* v. *Earl*, 281 U. S. 111, 50 S. Ct. 241, 74 L. Ed. 731; *Burnet* v. *Leininger*, 285 U. S. 136, 52 S. Ct. 345, 76 L. Ed. 665.

for taxing trust income, and that since the grantor would not be accountable for that income under the trust provisions, he may not be taxed under any other section of the Acts. And in this connection he relies upon the decision of this Court in *Helvering* v. *Butterworth*, 290 U. S. 365:

But the trust provisions have not been regarded as furnishing an exclusive mode of taxing such income. For example, it was not until the Revenue Act of 1924[6] that the grantor of a revocable trust was made specifically accountable as to the income therefrom. Prior to that time, however, there was a comprehensive system of taxing trust income as between the trustee and the beneficiary. Yet the courts held in cases arising under such prior Revenue Acts that income from a revocable trust was taxable to the grantor. *McCauley* v. *Commissioner*, 44 F. (2d) 919 (C. C. A. 5th); *Dickey* v. *Burnet*, 56 F. (2d) 917 (C. C. A. 8th), certiorari denied, 287 U. S. 606; *O'Donnell* v. *Commissioner*, 64 F. (2d) 634 (C. C. A. 9th), certiorari denied, 290 U. S. 699.

Moreover, whatever reasons may exist for construing the trust provisions as exclusive are counteracted in this case by the express statutory prohibition against deductions for personal and family expenses.[7] This prohibition clearly has the

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[6] Section 219 (g) and (h), Revenue Act of 1924, c. 234, 43 Stat. 253 (U. S. C., Title 26, Sec. 960). See *Corliss* v. *Bowers*, 281 U. S. 376.

[7] Section 215 (a) (1) of the 1926 Act and Section 24 (a) (1) of the 1928 Act, *infra*, pp. 29, 31.

effect of denying deductions for payments of alimony. Such payments are not business expenses, which are the only deductions allowable to an individual under the Revenue Acts, and the regulations have uniformly denied their deduction (Regulations 69, Article 291, *infra*, p. 31; Regulations 74, Article 281. See also Regulations 45, Article 291; Regulations 62, Article 291; Regulations 65, Article 291; Regulations 77, Article 281; Regulations 86, Article 24–1). This Court has stated that they do not decrease the taxable income of the husband. *Gould* v. *Gould*, 245 U. S. 151. And see *Longyear* v. *Helvering, supra; Joyce* v. *Commissioner*, 3 B. T. A. 393; *Van Den Bosch* v. *Commissioner*, 26 B. T. A. 679, 682. Certainly the petitioner would have been precluded from deducting amounts paid to his wife as alimony had he paid them directly rather than by way of the trust. We contend that he should not be allowed such a deduction merely because he arranged for the payments to be made indirectly.

The device for which the petitioner seeks judicial sanction is alarming in its potentialities. If the petitioner is correct, anyone with income-producing property could render meaningless the prohibition against deductions for personal expenditures by creating a blanket trust (or series of trusts) to meet specified obligations, such as rent and other personal expenses, retaining to himself the excess income as well as the right to the corpus at the ter-

mination of the trust.[8] But this Court has held that where tax avoidance is made easy under one interpretation of the statute another interpretation is to be preferred. *Carbon Steel Co.* v. *Lewellyn*, 251 U. S. 501.

The income in question is definitely income to the grantor, we submit, within both the meaning of the Sixteenth Amendment and the statutory definition of gross income. It must therefore be taxed to him unless the trust provisions of the statute operate to exclude that income from the general category of gross income. That those provisions do not have that effect is evidenced, first, by the fact that courts have construed them as non-exclusive, and second, by the principle that such construction would be contrary to the policy of the Act to deny deductions on account of personal expenses, and would thus conflict with the sound canon of construction not to interpret a statute in such manner as to render avoidance a simple matter.

Helvering v. *Butterworth, supra* does not, we contend, stand for the proposition that income derived from securities placed in trust is taxable only to the fiduciary or the named beneficiary and no one else. There may be situations in which it is taxable to the creator as well as to the named beneficiary. Or, again, it may happen that the creator only should be taxable, and not the beneficiary. For example: Let it be assumed that the trust is

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[8] Cf. *DuPont* v. *Commissioner*, 289 U. S. 685.

formed for him by the beneficiary. It would seem clear that the beneficiary is taxable, since he is essentially receiving wages or salary. Such result would be entirely consistent with taxing the grantor also, since payments out of income from property placed in trust by him operate to relieve him of a legal obligation and confer upon him exactly the same economic benefit as though he had directly received the income from the property and paid it over to his creditors. In the latter situation there can be no doubt but that both debtor and creditor would be taxable.

Again, let it be assumed that the trust is created to repay borrowed money to the beneficiary. In such case the beneficiary would probably not be taxable, since he is receiving merely a return of capital.* Or, consider the beneficiary in the instant case. Since the payments under the trust are in lieu of alimony, it may be that the beneficiary is not taxable under this Court's decision in *Gould* v. *Gould*, 245 U. S. 151. And see *Spencer* v. *Commissioner*, 20 B. T. A. 58. In any event, since she could look to the corpus of the trust if the income were insufficient to meet the specified annual pay-

* Compare, for example, *Blumenthal* v. *Commissioner*, 76 F. (2d) 507 (C. C. A. 2d), certiorari applied for, *Helvering* v. *Blumenthal*, No. 82, October Term, 1935. There the trust was for the repayment of a $75,000 loan bearing 5½% interest. It would seem that the creditor would not be taxable to the extent that he receives a return of principal, but would be taxable to the extent of the interest.

created by the grantor to pay for services perments, she would appear to be exempt. *Burnet* v. *Whitehouse*, 283 U. S. 148; *Helvering* v. *Pardee*, 290 U. S. 365, 370–371 (reported in the same opinion as *Helvering* v. *Butterworth, supra*).

Another situation is presented by the trusts created for the maintenance and support of the grantor's minor children.[10] The contention is there made that the children are taxable since they are "beneficiaries" within the meaning of *Helvering* v. *Butterworth, supra*, and, therefore, that Congress did not intend to tax both grantor and beneficiary in that kind of case. But that line of argument loses the true import of the *Butterworth* decision. There, failure to tax the beneficiary would have resulted in the trust income going entirely untaxed. The trust under consideration in that case was testamentary, and the only question before the Court was the tax liability as between the beneciary and the trustee, which is not true here. The trustee was held not taxable under the statute. In holding the beneficiary liable, this Court declared that Congress did not intend to allow income from a trust to escape taxation completely. It may well

[10] See *Schweitzer* v. *Commissioner*, 75 F. (2d) 702 (C. C. A. 7th), certiorari applied for, *Helvering* v. *Schweitzer*, Nos. 69 and 70, October Term, 1935. It is assumed, of course, that the funds are employed to discharge the grantor of a legal obligation to support his children. If the income is in excess of his legal obligation, the present issue is raised only to the extent that the income is within such obligation.

be, therefore, that if the grantor in this case is held taxable, the reason for applying the *Butterworth* decision will fail, and the beneficiary may be thus exempt. In any event, if the same item is actually income (as distinguished from a mere return of capital, etc.) to a beneficiary, there would appear to be nothing inconsistent with taxing him in respect thereto, and at the same time taxing the grantor for something entirely different, namely, the discharge of his legal obligation.

We submit that the *Butterworth* decision does not compel income from a trust in every case to be taxable either to the fiduciary or to the beneficiary to the exclusion of any other person, and that the grantor is properly taxable where the income is applied for his benefit.

CONCLUSION

The court below properly held that the income of the trust for the taxable years involved was used to satisfy a legal obligation of the petitioner and was accordingly taxable as income to him. Its decision should be affirmed.

Respectfully submitted.

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OCTOBER, 1935.

APPENDIX

Mason's Minnesota Statutes (1927), Vol. 2:

SEC. 8601. *Trustee of alimony.*—The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require, for the faithful performance of their trust.

SEC. 8602. *Property of husband—Permanent alimony.*—Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the

character and situation of the parties, and all other circumstances of the case. The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate.

SEC. 8603. *Order for alimony, etc., revised.*—After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may revise and alter such order or decree respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action.

Revenue Act of 1926, c. 27, 44 Stat. 9, 23, 28, 32:

SEC. 213. * * *

(a) The term "gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal

service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *.

(U. S. C. App., Title 26, Sec. 954.)

SEC. 215. (a) In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

* * * * *

(U. S. C. App., Title 26, Sec. 956.)

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

* * * * *

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

* * * * *

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * *

(2) There shall be allowed as an additional deduction in computing the net income

of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year;

(3) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

* * * * *

(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

> (h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him * * * such part of the income of the trust shall be included in computing the net income of the grantor.
>
> (U. S. C. App., Title 26, Sec. 960.)

To the extent that they are material, the corresponding sections (22 (a), 24 (a), 162 (b), 166, and 167) of the Revenue Act of 1928, c. 852, 45 Stat. 791, 797, 802, 838, 840, are substantially identical with the above.

Treasury Regulations 69, issued under the Revenue Act of 1926:

> ART. 291. *Personal and family expenses.*— * * *. Alimony and an allowance paid under a separation agreement are not deductible from gross income. * * *.

This statement is also contained in Article 281 of Treasury Regulations 74, issued under the Revenue Act of 1928.

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SUPREME COURT OF THE UNITED STATES.

No. 1.—October Term, 1935.

Edward B. Douglas, Petitioner,
vs.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[November 11, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

On September 12, 1923, petitioner, Edward B. Douglas, entered into an agreement with his wife and the Minneapolis Trust Company, by which he transferred securities in trust for his wife's benefit. Out of the income of the trust estate the trustee was to pay Mrs. Douglas annually the sum of $15,000, up to November 6, 1927, and thereafter $21,000. Deficiencies were to be made up in a prescribed manner. Excess income (in case the principal was not impaired) was to be paid to petitioner. On the death of his wife, he was to receive the property free of the trust. Petitioner reserved the right to designate securities for investment, subject, however, to the approval of the trustee acting in that respect on behalf of Mrs. Douglas.

The parties stipulated that the provisions for Mrs. Douglas were "in lieu of, and in full settlement of alimony, and of any and all dower rights or statutory interests in the estate" of her husband, and "in lieu of any and all claims for separate maintenance and allowance for her support".

Three days later, Mrs. Douglas obtained a decree of absolute divorce in a district court of the State of Minnesota. The decree provided:

"It Is Further Adjudged and Decreed that the defendant provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant and that neither party have any costs or disbursements herein".

The question in this case relates to the net income of the trust which was distributed to Mrs. Douglas in the years 1927 and 1928. The Commissioner of Internal Revenue determined that these amounts were income to the petitioner. Taxes assessed accordingly were paid by petitioner under protest, claim for refund was disallowed, and this suit was brought to recover the amount paid. Judgment for petitioner was reversed by the Circuit Court of Appeals. 73 F. (2d) 130. We granted certiorari (April 8, 1935) in view of an asserted conflict with the decision of the Circuit Court of Appeals of the Seventh Circuit in the case of *Schweitzer* v. *Commissioner of Internal Revenue*, 75 F. (2d) 702, 705, 706.

Petitioner contends that the agreement created an irrevocable trust; that under the Revenue Acts petitioner and Mrs. Douglas were separate taxpayers, and that, having accepted the benefits of the trust, she was taxable upon the income she received as beneficiary. Revenue Acts, 1926, Sec. 219; 1928, Secs. 161, 162, 167; *Helvering* v. *Butterworth*, 290 U. S. 365, 369, 370. The Circuit Court of Appeals decided that the income was taxable to the petitioner, since it went to the discharge of his legal obligation; that is, the income was devoted to payments which petitioner was bound to make under the decree of the Minnesota court. 75 F. (2d) p. 133.

The authority of the district court is defined by statute. Mason's Minnesota Statutes, 1927, Secs. 8601-8604. The court is empowered upon divorce for any cause, except that of the wife's adultery, to decree to the wife "such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case". The court may also decree "such alimony out of the estate, earnings and income of the husband as it may deem just and reasonable", but "the aggregate award and allowance made to the wife from the estate of the husband" is not "to exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate". *Id.*, Sec. 8602. The court "may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in

such proportions and at such times as the court shall order". *Id.*, Sec. 8601. After a decree "for alimony, or other allowance for the wife and children", or "for the appointment of trustees to receive and hold any property for the use of the wife or children", the court may from time to time "revise and alter" the decree, with respect to the amount "of such alimony or allowance" and also with respect to "the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action." *Id.*, Sec. 8603.[1]

The Supreme Court of the State has decided that the district court in exercising this authority is not precluded by stipulations and agreements of the parties, entered into pending the action (but not void by reason of having been made to facilitate

[1]The text of these provisions is as follows:

"Sec. 8601. *Trustee of alimony.*—The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require for the faithful performance of their trust.

"Sec. 8602. *Property of husband—Permanent alimony.*—Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case. The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate.

"Sec. 8603. *Order for alimony, etc., revised.*—After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may revise and alter such order or decree respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action".

the decree of divorce), from making such provision for the wife as the court may deem appropriate. Such stipulations or agreements do not control the court. The court may adopt or reject them as it deems best in the light of the situation of the parties. When such agreements are approved, and in effect are embodied in the decree, they do not detract from the authority of the court to alter or revise its decree and the provisions made for the wife's benefit. In *Warren* v. *Warren*, 116 Minn. 458, the Court said (pp. 459, 460):

"It appears that the original judgment for alimony was based upon a stipulation of the parties, entered into pending the action, but not to facilitate the granting of the divorce, and plaintiff contends that the judgment so founded and entered became a contract between the parties, and is not subject to change by the court, except upon restoration of plaintiff to her position and rights before its entry. In this we are unable to concur.

"Stipulations and agreements of the kind, where not void by reason of having been entered into to facilitate a decree of divorce, become merged in the judgment when entered, and are not, in the absence of statute upon the subject, so far of a contractual nature as to preclude the court subsequently from changing and modifying the judgment, upon application of one of the parties. The court is not controlled by the stipulation, and may adopt or reject it as seems consistent and proper from the situation of the parties, as disclosed by the evidence on the trial. The fact that such stipulations are usually adopted by the court does not change the situation".

See, also, *Haskell* v. *Haskell*, 116 Minn. 10; *Martinson* v. *Martinson*, 116 Minn. 128; *Sessions* v. *Sessions*, 178 Minn. 75; *Randall* v. *Randall*, 181 Minn. 18; *Erickson* v. *Erickson*, 181 Minn. 421.

As we have noted, this control over provisions for the benefit of the wife in connection with divorce applies by the express terms of the statute not only to "alimony" but also to "other allowance for the wife and children, or either of them", and to "the appointment of trustees to receive and hold any property for the use of the wife or children". See Sec. 8603.

In the instant case, the trust agreement was made on the day that the suit for divorce was brought. The agreement was manifestly made in contemplation of that suit. When the district court was shortly called upon to determine what provision should be made for the wife, the court was not bound by the trust agreement. Within the limits prescribed by the statute (and there is no suggestion that the provision here went beyond those limits) the

court had full authority to make an allowance to the wife out of her husband's property and to set up a trust to give effect to that allowance. Being satisfied with the provision made by the trust agreement, the court incorporated that provision in its decree. The court did not approve the trust agreement as one deriving efficacy from the action of the parties. The court made its own requirement. The decree required the petitioner to "provide and create the trust fund". While the terms of the trust as set up in the trust agreement were approved, the court made those terms its own. It was from this action of the court that the trust derived its force.

Amounts paid to a divorced wife under a decree for alimony are not regarded as income of the wife but as paid in discharge of the general obligation to support, which is made specific by the decree. *Gould* v. *Gould,* 245 U. S. 151, 153; *Audubon* v. *Shufeldt,* 181 U. S. 575, 577. Petitioner's contention that the district court did not award alimony is not supported by the terms of the decree. It described the provision as made "in lieu of all *other* alimony or interest in the property or estate of the defendant". However designated, it was a provision for annual payments to serve the purpose of alimony, that is, to assure to the wife suitable support. The fact that the provision was to be in lieu of any other interest in the husband's property did not affect the essential quality of these payments. Upon the preexisting duty of the husband the decree placed a particular and adequate sanction, and imposed upon petitioner the obligation to devote the income in question, through the medium of the trust, to the use of his divorced wife.

No question is raised as to the constitutional power of the Congress to attribute to petitioner the income thus segregated and paid in discharge of his obligation, and that authority could not be challenged successfully. *Burnet* v. *Wells,* 289 U. S. 670, 677, 682, 684. The question is one of statutory construction. We think that the definitions of gross income (Revenue Acts, 1926, Sec. 213; 1928, Sec. 22) are broad enough to cover income of that description. They are to be considered in the light of the evident intent of the Congress "to use its power to the full extent". *Irwin* v. *Gavit,* 268 U. S. 161; *Helvering* v. *Stockholms Bank,* 293 U. S. 84, 89. We have held that income was received by a taxpayer, when, pursuant to a contract, a debt or other obligation was discharged by another for his benefit. The transaction was regarded as being the

same in substance as if the money had been paid to the taxpayer and he had transmitted it to his creditor. *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716; *United States* v. *Boston & Maine Railroad*, 279 U. S. 732. See, also, *United States* v. *Mahoning Coal R. Co.*, 51 F. (2d) 208. The creation of a trust by the taxpayer as the channel for the application of the income to the discharge of his obligation leaves the nature of the transaction unaltered. *Burnet* v. *Wells, supra.* In the present case, the net income of the trust fund, which was paid to the wife under the decree, stands substantially on the same footing as though he had received the income personally and had been required by the decree to make the payment directly.

We do not regard the provisions of the statutes as to the taxation of trusts, fiduciaries and beneficiaries, (Revenue Acts, 1926, Sec. 2, 219; 1928, Secs. 161, 162) as intended to apply to cases where the income of the trust would otherwise remain, by virtue of the nature and purpose of the trust, attributable to the creator of the trust and accordingly taxable to him. These provisions have appropriate reference to cases where the income of the trust is no longer to be regarded as that of the settlor, and we find no warrant for a construction which would preclude the laying of the tax against the one who through the discharge of his obligation enjoys the benefit of the income as though he had personally received it.

The decision in *Helvering* v. *Butterworth*, 290 U. S. 365, is not opposed. There the trust was testamentary and the only question was with respect to the liability for the tax as between the trustee and the beneficiary. The Court observed that "the evident general purpose of the statute was to tax in some way the whole income of all trust estates". The decision has no application to a case where the income is still taxable to the grantor. Nor are the provisions of the statutes (Revenue Acts, 1926, Sec. 219 (h); 1928, Sec. 167) defining instances in which the grantor remains taxable, as in case of certain reservations for his benefit or provisions for the payment of premiums upon policies of insurance on his life, to be regarded as excluding instances not specified, where in contemplation of law the income remains in substance that of the grantor. No such exclusion is expressed and we see no ground for implying it.

The decree of the Circuit Court of Appeals is affirmed.

Decree affirmed.